S. HRG. 103–574

THE ANTI-MONEY LAUNDERING ACT OF 1993—S. 1664

HEARING

BEFORE THE

COMMITTEE ON
NKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

S. 1664

TREAMLINE THE CURRENCY TRANSACTION REPORTS [CTR], PROC-
S AND INCREASE THE ABILITY OF LAW ENFORCEMENT AGENCIES
MAKE USE OF CTR'S IN CRIMINAL INVESTIGATIONS AND TO
MINATE THE FILING OF REPORTS THAT HAVE LITTLE OR NO LAW
FORCEMENT VALUE

MARCH 15, 1994

ted for the use of the Committee on Banking, Housing, and Urban Affairs

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BANKING, HOUSING, AND [redacted]

UNITED STATES [redacted]

ONE HUNDRED [redacted]

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THE ANTI-MONEY LAUNDERING ACT OF 1993—S. 1664

TUESDAY, MARCH 15, 1994

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met in room 538, of the Dirksen Senate Office Building at 10:20 a.m., Senator Richard H. Bryan presiding.

OPENING STATEMENT OF SENATOR RICHARD H. BRYAN

Senator BRYAN [Presiding]. The Senate Banking, Housing, and Urban Affairs Committee is meeting today to take testimony on S. 1664, the Anti-Money Laundering Act of 1993.

The measure is sponsored by Senators Bond, Riegle, and myself.

Parenthetically, the Chairman was unable to join us today, but he's asked that his statement be made a part of the record, and with no objection, it will be done.

This legislation accomplishes two goals: Improving the efforts to combat money laundering while, at the same time, reducing unnecessary paper work requirements on our Nation's financial institutions.

Last week, the House Banking, Finance and Urban Affairs Committee unanimously reported out of Committee a companion measure. I commend Chairman Gonzalez for his leadership in this area.

Later this week, Senator Bond and I are prepared to offer this legislation to the Community Development Bank Bill, S. 1275.

The question that arises is why is passage of this legislation so critical. Americans throughout the country cite crime as one of their most serious concerns.

What strikes people is the rise in random, senseless violence that puts fear into the minds of our law-abiding citizens. In far too many of these senseless acts of violence, drugs have played a major role.

While our efforts to combat drug trafficking must be fought at many levels, cutting off the traffickers' cash flow is an important step. Not only does our anti-money laundering effort hurt the smugglers' cash flow, but it also assists law enforcement in detecting and prosecuting these cases.

This legislation makes two improvements in this effort. First, it requires Treasury to weed out categories of Currency Transaction Reports, referred to as CTR's, that have no useful law enforcement purposes and have, in fact, over the years, been counterproductive in the effect that it clogs up the system so much that law enforce-

ment doesn't have the time to properly scrutinize those transactions singled out as suspicious.

I read with interest the Washington Post story regarding the accused spy, Aldrich Rick Ames, where a number of suspicious transactions were filed on Ames and his wife but never acted upon.

It is my hope that by weeding out the filings that clearly have no useful law enforcement purpose, authorities can better scrutinize the ones that do.

Requiring a 30 percent reduction in CTR's is not only helpful in making it easier for law enforcement to scrutinize their files, it also should have a major benefit for businesses by reducing unnecessary paper work.

It is estimated that it costs businesses around $3 to $4 to file each CTR. With businesses filing nine million CTR's annually, we can see the enormous cost of this requirement and the burden it imposes upon our economy.

Second, this legislation closes a number of loopholes that money launderers have devised to get around our current detection system. Closing these loopholes should make it easier for law enforcement to track proceeds of illegal drug sales.

We've come a long way since the first anti-money laundering laws were enacted back in 1970. For the victims of random drug-related violence, we must continue this fight against the drug traffickers and their money laundering schemes.

Today, we will hear from Assistant Secretary for Enforcement, Ron Noble, who will give us the reaction of the Treasury Department, the principal administrators of the Bank Secrecy Act.

I personally want to commend Mr. Noble and his colleagues at Treasury for the fresh approach they're taking.

Mr. Noble, some time back, I had occasion to call you and alert you to my own concerns about current law and how we can improve it. I must say you've been most responsive in getting back to us, and it's been a pleasure for us to work with you. Mr. Noble will be accompanied by Tim Wagner of the U.S. Customs Service.

On our second panel, we will hear from Mr. Henry Wray of the General Accounting Office; John Byrne of the American Bankers Association; and Steve Greathouse representing the Nevada Resort Association.

I'm delighted to welcome you all here this morning. Your full statements have been received by the Committee staff and they will be made a part of the record.

Mr. Noble, we're pleased to hear from you first, and welcome you and your colleagues to the hearing this morning.

OPENING STATEMENT OF RONALD K. NOBLE, ASSISTANT SECRETARY FOR ENFORCEMENT, DEPARTMENT OF THE TREASURY, WASHINGTON, DC; ACCOMPANIED BY FAITH HOCHBERG, DEPUTY ASSISTANT SECRETARY FOR LAW ENFORCEMENT, DEPARTMENT OF THE TREASURY, WASHINGTON, DC; AND EDWARD FEDERICO, DIRECTOR OF NATIONAL OPERATIONS, CRIMINAL INVESTIGATION DIVISION, INTERNAL REVENUE SERVICE, WASHINGTON, DC

Mr. NOBLE. Thank you, sir.

Senator Bryan, the Department of the Treasury is happy to have an opportunity to testify on S. 1664, the Anti-Money Laundering Act of 1993, and to update the Subcommittee on Treasury's activities in the field of money laundering.

Last fall, I established a Money Laundering Review Task Force staffed by experienced agents, analysts, and regulators from every component of the Treasury Department with money laundering responsibilities, including all Treasury enforcement bureaus and the IRS Exam Division. In addition, we included the OCC and OTS.

For the first time in 20 years, we are taking a comprehensive look at our anti-money laundering programs, especially the way we exercise authority under the Bank Secrecy Act.

The top priority of the Task Force has been to reduce regulatory burdens on financial institutions and to communicate better with financial institutions about their roles and responsibilities in the fight against money laundering.

The Task Force has finished the first phase of its work and has made a significant number of recommendations in key areas. We are in the process of evaluating and implementing those recommendations.

Treasury has also established a Bank Secrecy Act Advisory Group composed of 30 experts in the field from Government, both law enforcement and financial institution regulators, and representatives of the major industries affected by currency transaction reporting requirements.

This group, which will meet for the first time on April 8, 1994, will serve as a think tank for ideas on how both Government and financial institutions should exercise their responsibilities for prevention and detection of money laundering.

Now I'd like to turn to the bill.

S. 1664, which parallels H.R. 3235, was developed in close cooperation with our staff, and we appreciate that. It arises from many of the concerns that caused Treasury to establish the Money Laundering Review Task Force and the Bank Secrecy Act Advisory Group.

We are concerned that aspects of the regulatory programs have become dated, inefficient, have created undue burdens on the Nation's financial institutions, and are in need of substantial revision.

The bill, section two in particular, addresses how to reduce the database of Currency Transaction Report filed by financial institutions. Last year, Mr. Chairman, we received almost 10 million CTR's. Banks are filing millions of reports annually on transactions for account holders which they may exempt under Treasury regulations. There are several causes for this phenomenon.

First, the Treasury procedures for exemptions are cumbersome and difficult to understand. Often it is easier to file than to apply for and maintain exemptions. Banks are also concerned that if they improperly exempt transactions, they may be subject to Bank Secrecy Act civil penalties by Treasury.

The bill sets some broad, and we believe sensible, outlines for Treasury's revision of the exemption process, with burdens shifting from the banks to Treasury. The bill also requires the Secretary to reduce Currency Transaction Report filings by banks by at least 30

percent and eliminate from the CTR form information of little value to law enforcement.

We are close to accomplishing the latter objective. The Task Force has redesigned the CTR and eliminated approximately a third of the information called for. We believe that this can be done without any significant detriment to the analytical use of the information provided.

These two steps, increasing those exempt from reports and reducing the amount of information filed, will move us to our goal of achieving a simpler and more valuable system to address the money laundering problem.

Turning to section 3, the Task Force is also focusing on the issue of suspicious transaction reporting. An essential complement to currency reporting is the reporting of suspicious activity to law enforcement by financial institutions. While banks have been taking this responsibility to heart in recent years, the Government's response has been less than satisfactory in my view.

Treasury and this Committee have heard the complaints of financial institutions that the reporting is too complicated, and that the reports are being ignored. The proposal in section 3 is an expression of the Committee's concern in this regard. We must move toward a less burdensome and more effective means for reporting suspicious transactions. The Task Force has developed some detailed recommendations in this area.

Section 5 of the bill addresses an important expansion of reporting to Treasury crossborder transportation of monetary instruments in excess of $10,000. The provision expands the definition to include instruments drawn on or by foreign financial institutions abroad, whether or not in bearer form.

This is a response to the problem of drug money laundering through foreign bank drafts. Drug money launderers smuggle currency or transmit it through a non-bank financial institution to foreign banks. They then purchase bank drafts or checks from the foreign banks. These instruments are easily transportable back into the United States and thereafter negotiated.

The Treasury believes that subjecting the instruments to crossborder reporting will contribute to deterring and detecting their use as money laundering vehicles.

Turning to section 6, imposition of Bank Secrecy Act civil penalties by banking agencies, the bill directs the Secretary to delegate this authority to assess BSA civil penalties to the Federal banking agencies. We agree and will consider delegation not only to the banking agencies, but to IRS for the non-bank financial institutions.

Turning to sections 7 and 8, non-bank financial institutions, the bill addresses the problem of money laundering through what are called NBFI's. As banks have become more effective in prevention and detection of money laundering, money launderers have turned to financial services offered by a variety of non-bank financial institutions, from casas de cambio to money transmitters and check cashers.

These institutions are subject to BSA recordkeeping and reporting with compliance in examination authority resting with the IRS examination division.

While IRS has bolstered resources for this function, the task is daunting. Estimates range from 50,000 to 150,000 of these institutions nationwide. The job cannot be done by Treasury and the IRS alone, and the Committee agrees.

Section 7 provides that there be uniform licensing and regulation of NBFI's including provision under State law for penalties for failure to implement BSA compliance programs and for failure to obtain a license. The Secretary of the Treasury is to report to Congress on the progress made by the States. We think this project will be worthwhile.

In a companion measure, section 8 requires Federal registration of NBFI's with Treasury. This should result in the reliable identification of all NBFI's and a foundation for identifying or eliminating illegitimate ones.

Summarizing other legislative measures, there are a few other legislative actions, some not solely within the jurisdiction of this Committee, necessary for Treasury anti-money laundering programs.

First and foremost, we have a critical need for a legislative amendment to address the problems posed by the Ratzlaf case, which was decided by the Supreme Court on January 24, 1994. The Ratzlaf decision was a major setback to the Government's anti-money laundering efforts. This decision will make the criminal prosecution of structuring to avoid the currency transaction reporting under 31 USC 5324 substantially more difficult.

Prior to Ratzlaf, it was enough to establish that a person who structured a transaction to evade the reporting requirements knew that the financial institution had a reporting obligation. After Ratzlaf, a prosecutor must establish that the person knew that the structuring itself was a crime.

We have worked with House Banking on a Ratzlaf amendment which is now part of H.R. 3235. We understand and welcome the fact that the Committee intends to include a similar amendment to S. 1664. Treasury also believes that changes are needed to the BSA summons authority to make it a more effective tool to investigate BSA violations.

This second area regards an amendment made by this Committee in 1986 which specifies that the warrantless border search authority of the Customs Service extends to searches of unreported currency or monetary instruments. As BSA compliance by banks has improved, the smuggling of bulk currency and monetary instruments, such as money orders, has become rampant. However, the Postal Service has taken the position that this authority to search does not extend to letter class mail and packages. This, in our view, creates a significant loophole for money launderers and drug traffickers.

Finally, there are two provisions pending with the House Ways and Means Committee introduced by Chairman Pickle last year. The first relates to the use and dissemination of reports of cash by trades or businesses under section 6050I of the Internal Revenue Code.

Currently, the tax disclosure provisions limit the use of these reports for tax enforcement purposes. Temporary authority to disseminate to Federal agencies for criminal purposes expired in No-

vember 1992. Since that time, the analytic work of FinCEN, the Financial Crimes Enforcement Network and other investigative agencies on these forms has come to a standstill.

The second provision would give the IRS the authority to be exempt from certain fiscal provisions in their conduct of large-scale undercover operations. Other investigative agencies have this authority without which such operations are cost prohibitive.

In conclusion, I hope that I have conveyed that this is not business as usual at the Department of the Treasury. We are open to new ideas and are committed to better communication with the affected public. The establishment of the Task Force and the Bank Secrecy Act Advisory Group are testament to our commitment.

We welcome the Committee's partnership with Treasury in improving the efficiency and effectiveness of our programs. Treasury and the Committee are working toward a common goal, better balance and perspective on the roles and responsibilities of the Government and financial institutions in the fight against money laundering and better deployment of our respective skills and resources.

Mr. Chairman, I thank you for your kind introductory remarks.

Seated to my left, I have Faith Hochberg, who is Deputy Assistant Secretary for Law Enforcement, and who is currently overseeing the work of the Money Laundering Task Force.

Thank you, sir.

Senator BRYAN. Welcome. It's a pleasure to have you with us as well.

Thank you very much, Mr. Noble. I appreciate that testimony and we'll get into some questions in a moment.

Joining us in this panel is Tim Wagner, who is the Director of the Financial Investigations Division of the U.S. Customs Service. Mr. Wagner, let me invite you for any comments you care to make at this time. We have received a copy of the testimony, and if you'd like to embellish upon any aspect of it, we'd be pleased to hear from you.

OPENING STATEMENT OF TIMOTHY D. WAGNER, DIRECTOR, FINANCIAL INVESTIGATIONS DIVISION, U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Mr. WAGNER. Thank you, sir.

Just as a—I brought an example of an investigation the Customs Service has conducted, just to illustrate the severity of the problems that are addressed by a number of the proposals brought forth today.

This one particular operation began in 1989 and it was an investigation conducted by our office in McAllen, Texas. That office targeted money laundering violations in the Rio Grande Valley. Specifically with the casas de cambio Cologne currency exchange located in Monterey, Mexico, which used bank accounts located at First City Texas Bank in McAllen.

The investigation disclosed that couriers from Cologne would either drive or fly across the U.S. border, declare the currency on currency and monetary instrument reports as that of Cologne, and deposit it in First City Texas Bank. After the deposit, the operators of Cologne in Monterey would wire-transfer blocks of money inter-

nationally. The volume of currency being imported was about $5 to $10 million per week.

Based on these revelations, the agent in charge of McAllen initiated Operation Casa Rico, which began with the introduction of two U.S. Customs undercover agents to two money launderers. The undercover agents represented their currency as being narcotics and weapons smuggling proceeds. Through a variety of intricate schemes, the officers' money was laundered by these individuals through casas de cambio, both in Mexico, using banks in the Rio Grande Valley, including the Cologne account at First City.

The second phase of the undercover operation led to the return of a 25-count indictment in 1992 for a variety of money laundering and bank fraud conspiracy charges. The indictment resulted in the seizure of approximately $2 million cash and negotiable instruments, two luxury condominiums, one quadruple, apartment building, several vehicles, and also an investment portfolio totaling approximately $30 million.

This is just one of a number of operations that happened to flourish because of some of the loopholes in our laws, especially the ability to transport foreign bank drafts across the U.S. border without reporting them to U.S. Customs Service.

Another problem is the ability to transport the concealed cash out of the country, deposit the cash in Mexican banks, and then obtain these bank drafts which can be returned to the United States without reporting.

There are as many schemes for laundering money as you can imagine, and we've been, over the past 20 years or so, attempting to gradually close the loopholes. Some of the proposals brought forth today are attempting to close some of the more troublesome loopholes.

Thank you.

Senator BRYAN. Thank you very much, Mr. Wagner.

We've been joined this morning by the Ranking Member of the Committee, Senator D'Amato. Let me yield to him for any comments that he'd care to make before we get into our questions.

OPENING STATEMENT OF SENATOR ALFONSE M. D'AMATO

Senator D'AMATO. Well, Mr. Chairman, first of all, let me commend you for your leadership on this legislation. There's no doubt in my mind that providing effective tools for dealing with money laundering is absolutely critical to any successful fight against the drug cartels, if we're going to have any hope at all.

I think that over the years, our efforts have not been nearly as effective as they could and should be. I am pleased to work with you in helping to attempt to come up with practical and effective tools for money laundering detection and to give to our people, who are on the front lines, all of the support we can, and hopefully this legislation will be part of that effort.

Mr. Chairman, I'm going to ask that my full statement and the statement of Senator Bond be entered into the record in their entirety, and again I commend you for your dedication.

Senator BRYAN. Thank you very much, Senator D'Amato. The two statements, as requested, will be made a part of the record,

and we look forward to working with you as well on this legislation.

Let me begin, Mr. Noble, by asking you to describe how this process works. I think we all have an idea of the concept, but you've got 10 million of the CTR's coming in from financial institutions all over the country. Can you just take us through, step by step, in very general terms, exactly what happens? I mean, the institution fills these out and sends them back. Take us through that process, if you will.

Mr. NOBLE. Yes.

The process begins at the bank teller window and that perhaps is one of the biggest impediments to the process. You have a bank teller who is required to take very detailed information from the person who has in excess of $10,000 in cash, information that if not accurately inputted might lead to the bank being assessed a significant or a stiff penalty.

You have the pressure on the teller and you also have the volume that is created when this kind of detailed information is retrieved. Then various banks have systems to check and re-check the information to make certain that the information was correctly gathered and reported on the form and to make certain that all boxes are completed accurately.

Once they've gone through an internal process, the bank sends them to the Detroit Computing Center of IRS where all the CTR's are gathered and collected, and then they are input. The process has led to about 10 million CTR's being filed last year because banks are not taking advantage of the exemptions which they could seek for certain accounts because the process is quite cumbersome and costly. And if, for some reason, an error is made, they risk the serious penalty that might follow.

Banks computerize the data and mechanize it to the point where they send the Government everything, and as a result, the Government now receives 10 million forms. This Committee and other Committees have deemed that we ought to find a way to reduce those forms since, for us, it is impractical and very costly to sift through 10 million files, whether it is computerized or non-computerized.

Senator BRYAN. Take us through, if you will, the next step. These 10 million CTR's flow from every point of the compass to where, and what's done with them at that point?

Mr. NOBLE. They flow to Detroit. The Detroit processing center is where they are input, so that there would be computerized access to these forms.

Then, in doing investigations, I, as a prosecutor working with an agent, such as Mr. Wagner, might come across a particular target or targets and we would run the target or targets' names through the computer center and see whether or not there were any hits, if you will, whether there are any matches of a name with the filing of CTR's. And that helps us develop a case, a money laundering case or drug trafficking case.

Ideally, what one would hope would happen as well is that there would be some kind of system we could set up for looking at the forms proactively and deciding whether or not there is something about the forms that are being filed or computerized that raises a

red flag or sets off alarms. But, in that area, we are far, far, far from the ideal place in making use of the CTR's.

Senator BRYAN. Obviously, if we're able to reduce this flow to a sensible volume, with respect to the purpose for which it's intended, that will help. But you do raise the question of what I would call the front end and the back end. Obviously, if, after the fact, you're working a case, you then can go to this vast repository or institution, and that may very well assist you in confirming some other data that you may have, or augmenting the case that you're developing against a particular individual.

Let me ask you on the front end. It's my understanding that the financial institution can indicate by notation that this is a suspicious transaction. Am I correct on that, Mr. Noble?

Mr. NOBLE. Yes, that is correct.

Senator BRYAN. And what do you do when, among the 10 million that come in, there is a suspicious notation? What kind of treatment is that given, or are you able to treat it at all with this volume that you've got?

Mr. NOBLE. Well, just to give you an idea, last year, and I believe the figures are correct, there were some 65,000 suspicious transaction reports filed. Now, what we'd like to do in that situation is when a suspicious transaction report is received by an agent, say an IRS agent, who is looking at the form, he or she would be able to glean the importance of following up on it.

But the very important aspect with the suspicious transaction reports is timeliness. If we are getting millions of CTR's or thousands of CTR's, and if you cannot look at the suspicious transaction reports quickly enough, then you risk the information becoming stale.

Senator BRYAN. Could you give us some sense, and we would invite your colleague, if she has the data there, out of these suspicious transaction notations. How many of them ultimately result in a prosecution or a case in which affirmative action is taken by the Department?

Mr. NOBLE. May I turn at this point—we have with us, Ed Federico, who's from the Criminal Investigation Division, the Director of National Operations of IRS.

Ed, why don't you walk them through the suspicious transactions and any kind of data that you could give the Chairman.

Senator Bryan. Could we get your name for the record again? We're delighted to have your comment.

Mr. FEDERICO. Thank you, Senator.

It's Edward Federico, F as in Frank, E-D-E-R-I-C-O.

Senator BRYAN. Thank you, Mr. Federico.

Mr. FEDERICO. I'm the Director of National Operations for the Criminal Investigation Division of IRS. We have the responsibility relating to the non-bank financial institutions domestically here in the United States.

Referring to your questions on suspicious transactions, as Mr. Noble stated, we received about 65,000 of those last year. Each of those are forwarded to our IRS district offices around the United States, and they are analyzed to determine whether there's any sort of criminal activity that may be involved.

Senator BRYAN. If I might interrupt, you're being very clear, but what time limits—Mr. Noble raised the question of the timeli-

ness—you've got those 65,000. How long does it take before those are pulled and sent to you for this special evaluation?

Mr. FEDERICO. There is a weekly run from Detroit that is forwarded out to the respective district offices. Naturally, 65,000, even in relationship to 10 million CTR's, is still a large number of documents to be analyzed by our agents, and we only have approximately 3,000 special agents with a multitude of other responsibilities.

The suspicious transactions themselves are most valuable. We do not have a specific number to provide to you at this time, but I could get that number, of cases that are initiated as a result of those.

Senator BRYAN. I think that might be helpful for our record, and we'll keep the record of this hearing open so you can provide that information for us.

Mr. FEDERICO. Yes, sir.

Once they are sent out, they are analyzed, they are compared to other pieces of information in the database itself. They may also be compared with forms 8300 that Mr. Noble referred to in his testimony. They are referred to tax returns to determine whether there is a comparable amount of income being reported to the IRS that would be commensurate with the type of income or the type of dollars that is reported on the suspicious transaction. At that point, a decision would be made as to whether there is any potential for a criminal investigation to be initiated.

Senator BRYAN. The Rick Ames case is much in the news. I have occasion, as has my colleague, to serve on another Committee in which this matter is being discussed in some depth. I mean, that strikes me as an example that your overwhelming volume of paper that comes in, that perhaps that matter might have been addressed much sooner and with much less damage to national security. Do you care to make any comment generally without going into any specific details on that?

Mr. NOBLE. Actually, may I interject?

Senator BRYAN. Yes, Mr. Noble.

Mr. NOBLE. We discussed this last night in terms of what kind of information we could give to the Committee that would be valuable without jeopardizing an on-going criminal investigation.

I would just simply state that in an ordinary case, if someone is the target or subject of a criminal investigation or a sensitive investigation by an agency, some kind of process being set up where they could contact a FinCEN, for example, to see whether or not any Currency Transaction Reports were filed under the name of that employee, would be something that would be valuable, we think, for national security as well as other sorts of clearances.

Senator BRYAN. I appreciate that.

Give us some sense, Mr. Noble—I'll ask you the question, but you can certainly defer to Mr. Federico if he might have additional information—in terms of actions that are taken as a follow-on from the filing itself, there are two generic categories that come to mind.

One is the anti-laundering provision that we're talking about. None of us who are familiar with this process are unmindful of the fact that it also has another purpose as well, and that is to make sure everybody pays what they owe the Federal Government in

terms of the tax collection aspect of this, separate and apart from money laundering.

Can you give us some perspective as to how much of the action that is generated as a result of these CTR's would fall into the category of the money laundering concerns and how much would fall into the tax evasion concerns?

Mr. NOBLE. I'll let Mr. Federico follow up on it, but it is my understanding that depending upon the nature of the suspicious transaction, and the information that's attached or included on the form, would determine what next step the investigator would take.

But I believe that in the ordinary course of business—and Ed, you can follow up on this if I'm incorrect—running it against the tax information associated with that individual is done. Is that correct?

Mr. FEDERICO. Yes. Every criminal investigation that IRS initiates, those names of corporations or individuals are run against the database in Detroit. Likewise, we are trying to use them systemically in the civil investigations, both in an attempt to reduce our outstanding accounts receivables in the collection area, as well as to increase our audit coverage in the civil arena.

Senator BRYAN. Mr. Federico, is it possible to give us just some general sense, perhaps not quantifying for us in particular numbers, if you don't have that, but a percentage? I mean, what percent would be the tax evasion and what percent would be attributed to the money laundering, if you can?

Mr. FEDERICO. I don't think that we have that type of information.

I would say, though, that the large, large percentage of the suspicious transactions are from a tax evasion as well as an illegal activity percentage. But, as Mr. Noble referred to earlier, with 10 million of the forms, and as you are trying to assist us with reducing that, a considerable portion of the 10 million relates to legitimate business.

Mr. NOBLE. But, Mr. Chairman, your point is well taken, and that is when people are engaged in suspicious transactions relating to CTR's, there is a dual purpose in theory, and one is pure tax evasion. You just don't want the Government to know how much cash you are generating or how much cash is flowing through your business.

To the extent you can structure an activity to not lead to generation of a report, you are better off than if you have a report generated. So your point is well taken, and that is a concern of the IRS and the Department of the Treasury as well.

Senator BRYAN. Mr. Noble, currently, as you know, under the law there are provisions which allow the Department to delegate certain authority for enforcement to the State level.

I note in your testimony, as well as the provisions that we have in this bill and the companion measure in the House, we involve the States and encourage them to adopt legislation under the aegis of the Uniform Commissioners of State Laws. Is it the philosophy of the Department to continue this delegation concept to the States, to allow them to assist in the enforcement and to work with the Department generally in the enforcement of the Act?

Mr. NOBLE. Yes. It is our philosophy or our judgment that the people who can best regulate and control this activity are, the first level, the bankers.

If we want to know what a suspicious transaction is, we ought to turn to the bankers and ask them what they believe is a suspicious transaction. That's why we are asking the banks to start to implement policies like know your customer and so forth.

The second point is, we believe that in the Federal Government here in Washington, we should not be dictating to the States what to do specifically, that is, dotting the i's and crossing the t's, but we should encourage the States to have regulatory mechanisms that can deal with the problem, especially the problem of non-bank financial institutions, which range in number anywhere from 50,000 to 150,000. There is no way we could monitor their activities at the Federal level. So I would like to say that we are thinking about working in concert with the States collaboratively, rather than dictatorially.

Senator BRYAN. You made the point in your testimony, but I think it needs to be emphasized again, that by reducing the volume, we in no way intend to minimize the enforcement, just the opposite. And section 5, which you commented on, really is one of the major loopholes that we're dealing with and both bills do address foreign bank drafts, which has been a problem for us.

Let me give you an opportunity, one more time, before deferring to my colleague to ask any questions that he may have, to explain the Ratzlaf decision with respect to its impact on you. And we were talking about, I think, as the lawyers would say, scienter, that is, what knowledge is required as a condition precedent to moving through a criminal process to prosecute under the provisions. Can you go through that again, Mr. Noble, one more time?

Mr. NOBLE. Sure.

Senator BRYAN. We are very interested in working with you and correcting that.

Mr. NOBLE. Imagine if I have $12,000 that I would like to deposit into an account. And I know that if I deposit $10,000 or more in the account on one occasion, the bank would be required to generate a CTR on me. I know that. I have the mental state, scienter, if you will.

So I decide to do it on three occasions, $4,000, $4,000, $4,000. The Government learns about it and is able to establish that I did do this. I deposited 3 amounts of $4,000 each time in order to avoid a reporting requirement.

In the Government's view, that ought to be enough in order to convict someone of a structuring violation. The Ratzlaf decision said no, no, no, no. You need another mental state, a higher level. I need not only to know that the bank has this obligation but also that structuring the way that I have is unlawful, and therefore, there is another element that must be achieved.

Someone in defense could say, look, I just didn't want the bank to report me to the IRS. I didn't intend to do anything unlawful, I didn't know it was unlawful.

So the legislative correction that this Committee and the House Banking Committee support and we support is one that establishes a mental state of knowing that there is a reporting requirement

and doing something consciously to avoid that reporting requirement or making that reporting requirement more difficult.

Senator BRYAN. Thank you.

Senator D'Amato.

Senator D'AMATO. Thank you, Mr. Chairman.

Mr. Noble, let me take you to another area. I understand that the Treasury Department has undertaken an investigation that has been or will soon be completed regarding the White House Treasury meetings on Whitewater Madison. Is that correct?

Mr. NOBLE. It's my understanding, from having testified with Secretary Bentsen, that the Treasury Department has taken steps to comply with a request for documents by Special Counsel Robert Fiske, sir, yes.

Senator D'AMATO. Were you aware of any independent investigation by the Department, or was this in connection with the request from Mr. Fiske?

I was given to believe that there was this study that is in the process and may have been completed regarding the White House Treasury meetings on Madison. Is that correct?

Mr. NOBLE. Sir, all of my information that I am about to relate to you is information that I gathered or received while sitting next to Secretary Bentsen during his testimony.

I believe he made three points, sir. One point is, upon first being advised of it, he made a referral to the Office of Government Ethics. Following that time, the Inspector General's Office at the Department was contemplating doing some kind of independent investigation. Finally, Independent Counsel Robert Fiske served subpoenas on people, including Treasury officials, and at that point the Inspector General decided not to proceed.

I think the Office of Government Ethics is consulting with Special Counsel Fiske, and the Secretary ordered that all the documents be produced and no records be destroyed, and that was fairly comprehensive. But, again, as I say, I got all of this information from attending a hearing with the Secretary.

Senator D'AMATO. Good. Thanks. I understand.

Mr. Noble, have you ever attended any meetings or had any conversations with White House personnel concerning the Whitewater Madison matter?

Mr. NOBLE. I would say that I have no personal knowledge of anything to do with the RTC, Whitewater, or Madison Guaranty.

Senator D'AMATO. Excuse me a second. Staff is whispering in my ear.

[Pause.]

Have you attended any meetings or had any conversations with White House personnel concerning Whitewater Madison?

Understand the question. Listen to me carefully.

Mr. NOBLE. It sounds like a two-part compound, complex, and confusing question.

Senator D'AMATO. OK. If you're having trouble with it, let's look at it. Have you had any personal—or have you had any conversations with anyone, any personnel at the White House concerning the Whitewater Madison issue?

Mr. NOBLE. It would be helpful for me, Senator, if you gave me a time frame. I mean, with the press reports and the media atten-

tion, any political appointee who has any kind of compassion is talking about what can happen with regard to accusations about one's integrity and so forth when someone comes to Washington.

So, yes, I've talked about the press reports, I've talked about the media coverage. But I have no personal knowledge. I attended no meetings, I had no information. I have nothing to do with the RTC, Whitewater, or Madison Guaranty. Everything I know I've either read or heard or saw on TV or heard at a hearing. I have no personal knowledge.

Senator D'AMATO. Have you spoken to any people at the White House in connection with any matters as it relates to Whitewater Madison?

Mr. NOBLE. Following the public disclosure that meetings occurred?

Senator D'AMATO. Well, have you—yes.

Mr. NOBLE. Yes.

Senator D'AMATO. Have you advised anybody about any actions or activities that you may be aware of that Treasury has undertaken in connection with this?

Mr. NOBLE. First, I have no knowledge of any activities other than the publicly reported information. And second, I have not talked about the substance of anything to do with Whitewater, RTC, or Madison Guaranty. I have not talked about any of the underlying facts that have been written about, talked about, or televised. I've not talked about the facts at all. I don't know the facts. I'm happy that I don't know the facts.

Senator D'AMATO. I'm happy for you.

Mr. NOBLE. So are my mother and father. They're happy as well. [Laughter.]

Senator D'AMATO. Mr. Noble, I'm not going to pursue this line of questioning for two reasons.

No. 1, I think you're an honorable man, and sometimes the process can be used in a manner which is not fair. I just want to really ascertain whether or not you've given, or have been asked for any information regarding Whitewater Madison, regarding Vince Foster's death, or regarding ballistic assistance that your Department may or may not have given to any people in the White House.

Mr. NOBLE. I can answer that categorically, that no one in the White House has asked me for any information with regard to Whitewater, RTC, Madison Guaranty, the Vince Foster suicide, the investigation by ATF of the ballistics associated with the Vince Foster suicide, or anything to do with any of the matters that you just articulated, sir.

Senator D'AMATO. I am satisfied with that answer, and I wish you continued success in your endeavors as the Assistant Secretary in charge of Enforcement.

Mr. NOBLE. I appreciate that, sir.

Senator D'AMATO. I want you to know that any way in which we can be helpful, I intend to loan my assistance, to this Committee and to Senator Bryan in particular, who's doing an outstanding job in this area.

Mr. NOBLE. Thank you, sir.

Senator D'AMATO. Thank you, Mr. Chairman.

Senator BRYAN. Thank you very much, Senator D'Amato.

I have a copy of the article that appeared in the Washington Post, and it does make reference to this Rick Ames' matter that we talked about briefly before, that this data was allegedly, if this article is accurate, made available.

Does the CIA or any of our national security agencies, do they have access to these CTR's, Mr. Noble?

Mr. FEDERICO. Through the Office, and through the Assistant Secretary, other enforcement agencies do have access to these upon their request. Normally, we utilize FinCEN for that purpose.

Now, whether specifically the CIA has made inquiries of the database, I am not in a position to state.

Senator BRYAN. Let's expand it just a little bit more, not with respect to the particular case in question, but if the CIA comes to you and says, look, we have some concerns about a series or individual CTR's. Are you then, under the law, able to provide that information to them, Mr. Federico?

Mr. FEDERICO. Yes, sir, we are.

Senator BRYAN. There's been some concern, as you know, in some of the testimony, as there may be some legal limitations as to what can be done with respect to some of the privacy concerns. But you do have that authority then, under the current law, to respond to any concerns that they may have?

Mr. NOBLE. With one exception, Mr. Chairman. That has to do with the 8300. There are tax secrecy obligations that prevent us from disclosing that information to people who are not on a certain list. But with regard to the CTR, a starting point, we certainly would be able to give that information. And if the CIA was investigating someone who is engaged in violations of national security, then there would be a mechanism for them to get access to additional information as well.

Senator BRYAN. Again, in a broad constraint, do you ever see either suspicious notations or otherwise suggest that perhaps there may be a need for an agency outside the Department, because of other legitimate public policy needs, to call their attention to the fact that these transactions look like they ought to be more thoroughly investigated by another department of Government? Does that ever occur, Mr. Federico, or do you just simply keep those in house unless you're requested to provide that information?

Mr. FEDERICO. No, sir. Most of the suspicious transactions, if it involves another agency or jurisdiction or interest to another agency, we are constantly striving for a cooperative venture with that agency to bring it to their attention.

I should note that most of the money laundering investigations that are successful are worked in a multi-agency environment. And as we gather information that is available to other agencies, we make that available to them.

Now, as Mr. Noble pointed out, if there are just tax violations involved and we are not in a multi-agency approved environment, then the law does not permit the sharing of that type of information. That would be, as you well know, tax return information as well as the Forms 8300.

Mr. NOBLE. Mr. Chairman, I would——

Senator BRYAN. Certainly, Mr. Noble.

Mr. NOBLE. —just follow up on a theme. That is the Ames' case certainly has taught me that there is more for us to do perhaps, as a Government, across the board. And we in the Department of the Treasury, I'm sure at Justice and the CIA as well, are going to be working on ways to improve the flow of information so that if there is an investigation being conducted by the CIA, or any intelligence entity, that they could have access to information of all sorts, including the Form 8300, sir.

Senator BRYAN. I appreciate, Mr. Noble, your candor and that of Mr. Federico. And I don't want to dwell on this. But I serve on the Intelligence Committee, and I just wanted, factually, to be clear.

Would your answers be the same with respect to a request by the FBI, who came to you and said, look, we have some concerns about some security?

Mr. NOBLE. Yes.

Senator BRYAN. National security concerns, we'd like to take a look at what you have with respect to any CTR's on individual A?

Mr. NOBLE. Right. We definitely would and I would say that, getting back to the Form 8300, it is important that these investigations can be conducted in private.

For example, prior to being nominated for this position, I had to fill out a tax disclosure form, making—permitting the IRS to disclose tax-related information about me. Obviously, if I am the subject of an investigation, they cannot get me to sign a waiver because that would alert me to the investigation. So it is important that we at the Department of the Treasury and the FBI and the CIA be permitted to have secret access to that information as long as it's for a national security or legitimate law enforcement purpose.

Senator BRYAN. I appreciate your response.

Trying to put this into focus, we're trying to do a couple of things here, obviously, to enhance the ability to ascertain money laundering activities as well as tax evasion.

We're also trying to make this process work for those who provide currently these 10 million reports each year, and those are the financial institutions. We have been provided with information that the cost of these reports are about $3 to $4 a piece to send in.

Do you have any comments as to whether or not your own independent evaluation or what you've heard would indicate that that would be a fair dollar cost?

We've got some people on the panel coming up that may be able to——

Mr. NOBLE. Yes. Yes. We do not dispute it.

Senator BRYAN. You don't dispute that.

Mr. NOBLE. Some might even say it may be a bit conservative, but we certainly don't dispute this.

Senator BRYAN. Mr. Wagner, is there anything that you might have? We've neglected you in this series of questions. Sir, do you have anything else to add for our record?

Mr. WAGNER. Customs, as a Treasury law enforcement agency, has direct line access to the CTR database as well, and in the example that I gave and the numerous examples of cases that Customs has made over the last several years that the CTR information has been instrumental.

The particular case that I mentioned previously started with an agent who was at an airport in Texas and observed some travelers bringing in $3 or $4 million from Mexico by way of a private aircraft. Their suspicions were aroused but they went to the database, the CTR database, as well as the PMIR database, to ascertain that what they had was a long-standing, highly significant organization that was moving immense sums of money.

I would venture to say that in at least 95 percent of Customs' money laundering investigations, the CTR database has some role. It's either queried or becomes actually instrumental in making the case.

Senator BRYAN. Does most of that action come at the front end or the back end?

Mr. WAGNER. Most of it comes at the front end. One of the first things an investigator would do when he becomes suspicious of a particular transaction or a particular individual, is explore the database to see what else he can learn. And oftentimes a wealth of information is gained by just a simple query.

Senator BRYAN. Mr. Wagner, we thank you. Thank each of you, and let me again compliment you, Mr. Noble, you and the Department. Mr. Newman has been in and been equally supportive, as has the Secretary himself.

I think the Department is really doing the right thing in trying to address the issue that we ought to be more effective and yet try to lighten the burden on those who are required to generate this mass of paper work.

Mr. NOBLE. Mr. Chairman, I would like to thank you again for your leadership and the fine work of your staff. They have been very helpful and worked with us very cooperatively, and we appreciate that as well.

Senator BRYAN. Thank you.

We'll now have our second panel join us. That's Mr. Henry Wray, the Director, Administration of Justice Issues from the General Accounting Office. Mr. John Byrne is the Senior Counsel of the American Bankers Association. And Mr. Steve Greathouse is the Chairman of the Nevada Resort Association in Las Vegas, Nevada, who is joined by Mr. Bob Faiss, their counsel, who is a senior partner in the law firm of Lionel Sawyer & Collins.

[Pause.]

Senator BRYAN. Mr. Wray, am I pronouncing your last name correctly, sir?

Mr. WRAY. Yes, sir. You are.

Senator BRYAN. May we hear from you first, and I will share with each of the witnesses, as I did the previous panel, that your full statement is made a part of the record, and we'd invite you to highlight those points that you think you need to reemphasize with us.

OPENING STATEMENT OF HENRY R. WRAY, DIRECTOR, ADMINISTRATION OF JUSTICE ISSUES, U.S. GENERAL ACCOUNTING OFFICE, WASHINGTON, DC

Mr. WRAY. Thank you very much, Mr. Chairman.

I will very briefly summarize my prepared statement. A number of points that I make in my statement I think have already been touched on by you or the Treasury Department witnesses.

I'm pleased to appear before you today to discuss GAO's assessment of the Government's processing and use of Currency Transaction Reports as it relates to the provisions of S. 1664. My testimony is based on previous GAO reports and testimony that are listed on the last page of my prepared statement.

As you know, Mr. Chairman, the Bank Secrecy Act has become a major weapon in the Government's efforts to combat money laundering. The implementing regulations require banks and other financial institutions to file a Currency Transaction Report, or "CTR," for each transaction that involves more than $10,000 in currency.

According to law enforcement agencies, CTR's are an extremely useful tool in identifying, investigating, and prosecuting money laundering operations and other criminal activities generating large amounts of cash. However, it appears that the CTR database is becoming unwieldy and contains many reports that lack law enforcement value.

As the figure on page 3 of my statement indicates, the number of CTR's filed annually has increased steadily in recent years from slightly over 10 million in 1987 to almost 50 million as of April 1993. At the rate the filings are increasing, which is in excess of 12 percent each year, the total could exceed 92 million in 1996.

The Internal Revenue Service——

Senator BRYAN. What was that number again, Mr. Wray. I was distracted.

Mr. WRAY. The total could be more than 92 million by 1996.

Senator BRYAN. Ninety-two million?

Mr. WRAY. That's right.

The Internal Revenue Service estimates that between 30 and 40 percent of the CTR's filed are reports of routine deposits by large, well-established retail businesses. These CTR's are unlikely to identify potential money laundering or other currency violations, but they impose substantial costs on the Nation's banking industry and on the Government itself.

As has been mentioned earlier today, it's estimated that it costs banks more than $3 to file a CTR with, as we understand it, the costs varying depending on the extent to which they use automated systems. IRS officials estimated that in fiscal year 1992, it cost $2 per CTR for the Government to process the reports and store them on its database.

GAO's analysis of CTR filings confirms that the volume of CTR's could be greatly reduced without jeopardizing law enforcement needs. In fact, our work indicates that the large volume of CTR's in the database makes analysis difficult, expensive, and time-consuming.

Therefore, as you mentioned in your opening remarks, Mr. Chairman, eliminating routine CTR's should not only reduce Government and industry costs, but also enhance the usefulness of the database by enabling it to better focus on those CTR's that are relevant for law enforcement purposes. And our understanding is that this is particularly important in terms of using the database for

proactive analyses that require trends and patterns where the clutter of routine reports now on the system makes it very difficult to isolate those trends.

Treasury Department regulations now authorize banks to exempt routine transactions from CTR reporting under certain conditions. However—and this was touched on also—most banks appear reluctant to use the exemption authority because of difficulty understanding the exemption procedures and concern that they may incur liability for granting improper exemptions. Also, we've been told that many banks use automated systems that make it easier and less costly to report all transactions than to go through the process of programming an exemption. Mr. Noble also touched on that fact.

S. 1664 contains several provisions that, while recognizing the value of CTR's, emphasize the need to reduce the number filed by ensuring that those transactions that could be exempted are, in fact, exempted. The bill requires the Secretary of the Treasury to exempt certain categories of transactions from reporting and also authorizes the Secretary to grant discretionary exemptions for other types of transactions based on information submitted by financial institutions.

The bill shields institutions from liability for failing to file a report on an exempted transaction unless the institution knowingly filed false or incomplete information or had reason to believe that the exemption criteria was not satisfied.

The bill, as has been mentioned earlier, also establishes a goal for reducing CTR's by at least 30 percent of the number filed during the year preceding its enactment.

We support these provisions. It's clear that banks are not using the exemption process to the extent they could in order to reduce the volume of CTR's filed. The bill addresses many of the factors that appear to underlie the failure to grant more exemptions. We believe that any action taken to increase the use of legitimate exemptions will help both eliminate unnecessary costs and ensure that the CTR data collected will have the maximum value to law enforcement authorities.

Thank you.

Senator BRYAN. Thank you very much, Mr. Wray.

Mr. Byrne, we'll hear from you next.

OPENING STATEMENT OF JOHN J. BYRNE, SENIOR COUNSEL, AMERICAN BANKERS ASSOCIATION, WASHINGTON, DC

Mr. BYRNE. Thank you, Mr. Chairman.

I'm John Byrne, the Senior Counsel of the American Bankers Association and a member of the Bank Secrecy Act Advisory Board that was recently announced by Treasury Secretary Bentsen. I appreciate the opportunity to testify on behalf of the ABA on S. 1664, the Anti-Money Laundering Act of 1993.

The ABA's long been involved in the debate on how to make Bank Secrecy Act compliance and money laundering deterrence more efficient. We believe that there's a need to review all of the requirements currently in place in order to ensure that we are not unduly hindering the U.S. financial system while adding little to our country's law enforcement efforts.

We are pleased that the Treasury Department, under the direction of Assistant Secretary Noble, agrees with the need for Bank Secrecy Act review. Most importantly, we strongly support S. 1664 as an approach that goes a long way toward fixing the current reporting system.

Senator Bryan, we've been frustrated at the amount of routine reports filed by our industry and their limited utility to the Government. While the value to law enforcement of the reports are frequently hampered by diminished resources, the reports themselves are adding to the problem. However, we are beginning to see improvements.

As we've heard before, in 1993, the industry filed about 10.1 million currency reports. The time for completing one of these reports runs anywhere from 20 to 30 minutes. Based on those parameters, financial institutions believe that it costs anywhere from $3, which is the number that we accept, to as high as $15, depending on whether or not the filing is manual or done by magnetic media. However, as we said before, this seems destined to change and we now will turn our comments to S. 1664.

This bill will help in a drastic reduction of routine or useless Currency Transaction Reports. As you pointed out in your floor statement announcing the bill's introduction, the excessive number of reports filed, many of which clearly have no bearing on Federal money laundering enforcement, place a great strain on both Federal investigators and the businesses which must file the CTR's.

We are particularly pleased with the requirements in section 2 mandating that the Treasury reduce the number of CTR's by a minimum of 30 percent. This is an important call to the Government to ensure that the CTR reports are used to deter and investigate money laundering. The system change to the CTR exemption process will greatly assist in that goal.

As the Committee knows, Bank Secrecy Act reporting requirements allow banks to permit exemptions and there's been some discussion about why banks do not use the exemption process.

In part, it's because it is cumbersome, but I must also say, having worked and trained the bankers for the past 10 years on the exemption system, frequently law enforcement agents will tell bankers, privately and in public settings, that perhaps if we are unable to determine the source of a business if it's changed hands, and they're on our exemption list, we would be unintentionally helping in the laundering of illegal monies.

So part of the reason is our inability to always know the business once we've set up the exemption. We believe the existing exemption mechanism no longer works and should be revamped.

Section 2 appears to be the answer for both banks and law enforcement. It creates a two-tier exemption system, a mandatory system that would be signed off by the Treasury, and a discretionary system in which we would make recommendations and the Treasury would approve or deny those recommendations.

This proposal is consistent with IRS' own analysis that 40 percent of the CTR database is filled with routine information. We hope that the agency will review the discretionary list in a prompt and timely manner and we recommend that the section be changed to ensure swift review.

The Treasury Department, like many Federal agencies, has been hampered by limited resources, so there must be adequate staff to handle this new authority.

With the addition of certainty to the process, as well as a safe harbor for financial institutions, Congress can rekindle our interest in bank initiated exemptions. However, efficiency is the key. Streamlining currency reports should not turn out to be more expensive than leaving things alone. Therefore, we support the concept of redesign in the bill, but banks must be consulted during this process if change is to have any real effect. This is an excellent issue for the Bank Secrecy Act Advisory Group, and we will be offering our suggestions in that forum.

Mr. Chairman, we've also long criticized the multiple filing process for reporting suspicious transactions to the Government. Technology being what it is, it stands to reason that banks should only have to file with one agency.

Section 3 of your bill will go a long way toward guaranteeing that result if it covers all current suspicious transaction reports. We would be happy to work with both the Government and Congress on this issue.

Mr. Chairman, section 5 of the bill we would recommend also be amended along the lines of the House Banking Committee money laundering companion bill that passed the Full Committee on March 9.

The House bill was amended to require persons bringing negotiable instruments drawn on or by foreign banks in excess of $10,000 into the United States to file a report, instead of requiring banks to report such instruments as part of the currency reporting requirements.

We understand that the Treasury Department supports this approach, and we would be pleased to work with this Committee to develop language to accomplish that result.

In January, the Supreme Court ruled that the laws regarding structuring of cash transactions to avoid reporting could not be violated simply by avoidance of the over $10,000 reporting requirements.

The Court, in Ratzlaf v. United States, held that even though the bank had a duty to report cash transactions and that it was a crime for willful violation of the structuring prohibition, that the individual could not be guilty of violating the bank's reporting requirements because he did not intend to disobey the law.

Mr. Chairman, while this is not a bank decision per se, we are concerned about the possible ramifications for our industry. Institutions are still required to report possible violations of law, including structuring, to law enforcement and the agencies. A perfect example is in the CIA situation.

Therefore, if a banker suspects that a transaction is being conducted to avoid reporting, a report must be sent to the appropriate agencies. It should not be up to the banker to determine an individual's intent. And we do frequently get calls from bankers who have been told by customers that the reason why they're structuring their transactions is because they simply don't want the Government to know about the monies that they are putting in a bank, or they're hiding it from a spouse.

That's not our job to make that determination. If you make a change and overturn the Ratzlaf decision, and we can go back to where it was before, and if we see a suspicious transaction like structuring, we'll simply report it, we'll not train the banker to determine the intent behind it.

Senator BRYAN. Mr. Byrne, let me be clear. Are you supporting the provision as amended in the House bill that deals with the Ratzlaf decision?

Mr. BYRNE. Absolutely, Senator Bryan.

We also would recommend, in addition to that change, that this Committee and the Congress consider, if the exemptions change in section 2 does not work in the next several years, to take a look at a long-held recommendation of the ABA that we increase the currency transaction reporting threshold from the current $10,000 limit.

Right now, $10,000 is still a large amount of money for an individual. However, for corporations, that number was created in 1972 and our economists have taken a look at the cost of inflation and other changes, and in 1994 dollars, we would suggest that it's closer to $35,000 or $36,000. Therefore, we have recommended that the CTR level be raised to $25,000 for corporations but remain at $10,000 for transactions by individuals.

We believe that our argument has been bolstered by a November 1993 GAO report which concluded that 58 percent of the CTR's in 1992 were in amounts of $20,000 or less.

As we said before, we're not prepared to push this particular proposal at this point, but that Congress may want to look at this if the 30 to 40 percent goal is not reached by the exemption change.

Finally, Mr. Chairman, deterrence works if risks are raised sufficiently. We believe that the risks involved in attempting to launder money through financial institutions are great, and reporting suspicious activity is constantly on the rise.

Congress can close out the possibility of laundering in financial institutions by improving the CTR reporting system. We ask this Committee to consider our comments as constructive criticism to a system that can work if all affected parties work as a team.

We thank you for the opportunity to present our views.

Senator BRYAN. Mr. Byrne, we thank you very much.

We'll now hear from Mr. Greathouse and Mr. Faiss.

Gentlemen, neighbors, friends, it's nice to have you here today.

OPENING STATEMENT OF STEVE GREATHOUSE, CHAIRMAN, NEVADA RESORT ASSOCIATION, LAS VEGAS, NEVADA

Mr. GREATHOUSE. It's good to be here, Mr. Chairman.

I am Steve Greathouse, the president of Harrah's Casino Hotel Division. I appear today as the chairman of the Nevada Resort Association, an association of 37 casinos, casino hotels, and resorts throughout Nevada. The association's members also have current or planned gaming operations in eleven other States including Arizona, California, Colorado, Illinois, Indiana, Louisiana, Mississippi, Missouri, New Jersey, New York, and Washington.

With me today is Robert Faiss, our legal counsel.

My remarks are brief and shall focus on the policies embodied in S. 1664. Mr. Faiss will then discuss the specific provisions of the bill.

Our association supports S. 1664 and its primary goals—increasing the effectiveness of governmental and private efforts to control money laundering, while reducing the regulatory burden on private businesses.

Over the course of the last year, the association has sought to advance those goals by working with the Treasury Department to help refine casino cash reporting regulations to effectively deter and detect money laundering without creating an unnecessary regulatory burden on business. We pledge to continue working in cooperation with Treasury to reach those goals.

Although S. 1664 is primarily directed toward banks, sections 7 and 8 envision a comprehensive State licensing scheme for non-bank financial institutions that are engaged in transmitting money. Our association endorses this concept of comprehensive State regulation as a complement to Federal cash reporting regulations. We believe that casino regulation in the State of Nevada provides an excellent example of the effectiveness of such comprehensive State regulation being used to augment the Federal cash transaction reporting requirements.

We believe the benefits of such an effective State regulatory program, built around the cash reporting parameters of the Federal authorities, can be realized for all non-bank financial institutions as well as casinos. However, we submit that such a State licensing and regulatory scheme loses much of its utility and economy if the Secretary of the Treasury is restricted from entering into enforcement agreements with the State licensing and regulatory authorities.

We believe the Secretary of the Treasury must have the discretion to enter into agreements with the various jurisdictions to enforce cash reporting regulations as part of a comprehensive State regulatory and licensing scheme.

H.R. 3235, the House counterpart to S. 1664, removes this discretion of the Secretary to enter into such enforcement agreements with the States. We submit that the Secretary's power to enter into such agreements, which is undisturbed by S. 1664, can only add to the effectiveness of the State licensing and enforcement schemes such as those envisioned by sections 7 and 8 of S. 1664.

Moreover, we believe that all gaming jurisdictions, whether they be States or the regulatory bodies in charge of Indian gaming, should have the option of entering into such enforcement agreements with the Treasury. Currently, only States have this ability.

If such State or Indian jurisdictions are able to satisfy the Secretary of the Treasury that they have comprehensive regulatory systems that provide Treasury the information sought by the Federal cash reporting laws, the Secretary should have the discretion to enter into enforcement agreements with those jurisdictions.

This allows the Secretary to obtain the information needed for Federal anti-money laundering efforts with minimum allocation of Federal resources. The avoidance of duplicative State and Federal regulations also lessens the compliance costs of the regulated businesses and the enforcement costs of Government.

In summary, we support the bill and its goals, but ask that the final language of the bill specifically give all jurisdictions the opportunity to create and enforce comprehensive cash transaction reporting laws through enforcement agreements with the Secretary of the Treasury.

If the jurisdiction can demonstrate to the Secretary's satisfaction that the cash transaction reporting laws will enhance and complement the Federal anti-money laundering efforts without compromising enforcement, monitoring, or the quality of information provided to the Treasury, that jurisdiction should be given the opportunity to police cash transactions as a part of its own regulation affected businesses.

We believe the costs will ultimately be lower for both Government and business, while the effectiveness of anti-money laundering efforts will be enhanced.

Senator BRYAN. Mr. Greathouse, we thank you.

Mr. Faiss.

OPENING STATEMENT OF ROBERT D. FAISS, LEGAL COUNSEL, NEVADA RESORT ASSOCIATION

Mr. FAISS. Mr. Chairman, thank you. Steve Greathouse and I appear today as representatives of an industry that has a strong commitment to keeping itself free of money laundering and takes pride in its success in doing so.

Ronald Noble spoke this morning of the need for an amendment to strengthen the laws against structuring in the aftermath of the Ratzlaf decision.

Steve Greathouse has asked me to state that the Nevada Resort Association supports Mr. Noble's call for that amendment. By virtue of an enforcement agreement with the Secretary of the Treasury, our State enforces the goal of the Bank Secrecy Act through regulation 6A of the Nevada Gaming Commission.

Although adoption of this bill would have no immediate or direct impact on Nevada, it is important to us because any change in the Act may ultimately affect Nevada casinos. And any development that affects casinos can have a decided impact on Nevada. Nevada's gaming industry, directly or indirectly, is responsible for about three-quarters of our State's tax revenue, economic activity, and employment.

Sections 7 and 8 of the bill, as Mr. Greathouse said, recognize that State licensure and regulation is an effective method to regulate non-bank financial institutions. We suggest equally important is the power of the Secretary to enter into enforcement agreements with the State, to implement the Federal cash reporting laws or State laws patterned after the Federal laws.

Nevada today has the only enforcement agreement with the Treasury. That has been misunderstood by a few as meaning Treasury abdicated its responsibility with respect to Nevada casinos and the State of Nevada assumed none. Neither is correct, and the contrary is true. Nevada has a strong partnership with Treasury in preventing money laundering in our casinos.

Our gaming regulators have been tough in enforcing the Nevada counterpart of title 31 regulations. And Treasury has been tough in its oversight function.

Nevada's tough approach dates back to that day almost 10 years ago, Senator Bryan, when you, as Governor of Nevada, approved the State participation in the enforcement agreement only after you were satisfied Nevada had the resources and the commitment to do the job that had to be done.

I can report today that since 1985, pursuant to its agreement with the Secretary, the Nevada State Gaming Control Board has done the job. The Nevada Board spends 20,000 agent hours a year on regulation 6A enforcement, which takes the form of compliance audits, overt inspections, and undercover operations.

More than 240,000 CTR's have been filed by Nevada casinos in that period. The Nevada Board has levied fines totaling approximately $1.8 million against casinos for violations, including a single fine of $1 million. I stress that these were technical violations. In no case was there even a hint of a money laundering offense. Our regulation 6A goes beyond mere reporting and actually prohibits some activities that are permitted under title 31.

If I may give you just a couple of examples.

The transaction of an exchange of cash for cash with a patron in an amount exceeding $2,500 but less than $10,000, title 31 has no provision. That transaction is prohibited in Nevada.

In an exchange of cash for cash with a patron in excess of $10,000, title 31 requires two CTR's, but that transaction is prohibited in Nevada.

In the exchange of a casino check for patron cash in excess of $3,000 but less than $10,000, title 31 today has no provision. That transaction is prohibited in Nevada.

The Nevada Board has forced regulation 6A to be a priority with our licensees. At least one observer on the Federal level has said that the Nevada regulators may get the attention of the gaming industry much better than the Federal Government because those regulators have the power not only to fine but to revoke gaming licenses.

Nevada regulation 6A embodies a major goal S. 1664 seeks to achieve. Efficiency of the Federal cash transaction laws, both in terms of resources employed and the results achieved.

We suggest to you and the Committee that that goal can be furthered by preservation of the Secretary's discretion to enter into enforcement agreements such as the one with Nevada. We commend you and the cosponsors of S. 1664 for recognizing that revocation of the Secretary's exemption authority is unnecessary and could be counterproductive.

If Nevada's enforcement agreement has enhanced the fight against money laundering, it would be counterproductive to that fight for the Congress to revoke it. On the other hand, if Nevada's enforcement agreement has weakened the fight against money laundering, the Secretary of the Treasury has the authority to revoke it without any Congressional action.

Further, we suggest that it would be premature at best to strip the Secretary of this flexibility without benefit of the study now underway by the Money Laundering Review Task Force.

We fully expect that any review will find the casino industry is so diverse, not only between the different States but even within a State itself, that the national interests will be benefited by the

Secretary having the discretion to shape anti-money laundering enforcement to meet the characteristics of the different jurisdictions.

As a last note, we would like to suggest that this matter affects more than the State of Nevada. Casino gaming today is in operation or in development in nearly 20 States. It has been estimated that every population center in the country will be within a 3-hour drive of casino gaming within 10 years.

Enforcement agreements could give those new casino jurisdictions the incentive to enact and enforce comprehensive programs against money laundering, thus bolstering the national effort without burden on the Federal funds allocated to that effort, as the Nevada experience has shown.

We find, among those jurisdictions, Mr. Chairman, that there is a growing recognition of the importance of the Secretary's exemption authority. We are told the Colorado gaming industry has discussed with Federal authorities a possible request for an exemption. The matter is under discussion by the gaming industry in various other States where casino gaming is now approved.

Two weeks ago in Houston, the members of the National Gaming Law Council supported retention of the Secretary's exemption authority. And so, as Mr. Greathouse testified, instead of revoking this discretion of the Secretary, we suggest that the Congress should enhance its effectiveness by making it available to additional entities.

Thank you, Mr. Chairman, for the privilege of appearing here today.

Senator BRYAN. Mr. Faiss, thank you very much.

Mr. Wray, let me begin with you with a couple of questions.

I was somewhat shocked by your projection, 1996, 92 million.

Mr. WRAY. That would be the total number of CTR's in the system. It's a cumulative figure.

Senator BRYAN. Do you have any idea what the annual rate would be? Right now, we're told it's 10 million. What would it be in terms of 1996? Do you know what kind of increase would be projected, or did you do any work on that one?

Mr. WRAY. Well, it's been increasing at a rate of about a little over 12 percent a year; it would be in that neighborhood.

Senator BRYAN. I mean, it's clear from your testimony and the observation of Treasury—in other words, the amount of information in the database is simply overwhelming. And what you're saying, as I understand your testimony, is that without change, that's going to be a compounded problem with the rate of increase together with what is the cumulative amount of volume of information in the database.

Mr. WRAY. Yes. Essentially, the volume would close to double in 3 or 4 years.

Senator BRYAN. You indicated that you had a chance to look at S. 1664 and the exemption process. I take it that you are satisfied that in terms of structuring something that is workable in reducing the volume and yet protecting the public policy objective of the Act, that S. 1664 and its counterpart hit the mark?

Mr. WRAY. We believe so, Mr. Chairman. It still will depend on the banks, to a large extent, to use the exemption authority and you still might have the problem that automated systems perhaps

still make it cost effective to continue filing. But we believe that these provisions are certainly a major step toward making the exemption process more meaningful.

One of the main things they do, from our point of view, is change the incentives. I think one of the problems now is that the entity with the greatest incentive to reduce the volume is the Federal Government.

While the exemptions are granted by banks, as Mr. Byrne has mentioned, banks aren't really in the best position to do this. The businesses themselves, who are engaged in routine transactions, don't have any particular incentive to have an exemption. So we think that one of the major benefits of the provisions of the bill is to shift the incentives to where they should be.

Senator BRYAN. Mr. Byrne, I think you used the term that about 40 percent of these CTR's probably relate to fairly routine banking transactions that really have no probative value in terms of dealing with money laundering as such?

Mr. BYRNE. Yes, Senator. That's basically what the Government has said, and we agree with that, and we have found that this percentage is major retailers and grocers and places like that.

Senator BRYAN. Sure.

You're satisfied that the way we structured this exemption that, as you've pointed out, now that there is an exemption process currently available under the law, it is unworkable and unmanageable and because you are at risk to some extent if you don't dot all of the i's and cross the t's, that it's almost easier for you simply to over-comply, if you will, and not face the risk of being penalized. Is this structure that we've provided here in S. 1664, in your judgment, going to be workable?

Mr. BYRNE. What is so workable about it, Senator Bryan, is that there's a mandatory exemption system, but there's also the discretionary, so the bank can make an argument that if a particular company isn't on the mandatory list but maybe it's a major regional retailer that wasn't picked up, we could make that suggestion and work with Treasury to come to the same conclusion. I think in that instance, the bank would offer its suggestions about that particular customer. So I think the two-tier system should work fairly well.

Senator BRYAN. As you know, there has been a regulation that has been deferred until December 1, which reduces at least the collection threshold from 10 thousand to 3 thousand. Do you have any idea what additional burden that would impose upon banks to comply with that information?

Mr. BYRNE. I believe that the threshold you're mentioning applies to non-banks and not to our industry. With us, it would have a tenfold increase in currency reports if that were to happen.

Senator BRYAN. Mr. Greathouse, you have offered your comments about the current provisions as they exist under Nevada law. And I'll give Mr. Faiss an opportunity to respond to this as well.

I think a number of people are not aware that there is a reporting requirement by Nevada casinos.

The point that you and Mr. Faiss are making is that, not only do you comply with the requirements of the Federal law, but that you have, in addition, provisions which the Gaming Commission

has adopted and which are enforced by the Gaming Control Board, that makes your compliance even greater than that required under the terms of the Federal law. Is that the essence of your testimony, Mr. Faiss?

Mr. FAISS. Insofar as money laundering is concerned, yes, Mr. Chairman. There are some differences between the two.

Senator BRYAN. In terms of the additional sanction that you mentioned because gaming is a privileged industry in Nevada, you are indicating that there is an additional incentive to comply under this delegated authority that exists now, because not only would a casino be in violation, and you've indicated that there have been some technical violations in which rather substantial fines have been imposed that in no way dealt with money laundering, but you're indicating that the ultimate hammer by the Gaming Commission is for such a regulated licensee that the license itself can be revoked?

Mr. FAISS. Yes, Mr. Chairman. That is the supreme punishment. After that, there's nothing for a casino.

Senator BRYAN. Are you satisfied that the way S. 1664 is currently structured that this exemption that's been provided in terms of the categories of reduction—now I'm not talking about the 6A, but in terms of the exemption, that that makes some sense from your perspective as well?

Mr. FAISS. It certainly does. Sections 2 and 3 call for the CTR process to eliminate information which has little or no value for law enforcement purposes and to seek to reduce, as you said, the CTR's by at least 30 percent. The Nevada gaming industry strongly supports both of those goals.

Senator BRYAN. Mr. Byrne, returning to you, you're on the Task Force. Would you have any suggestions or recommendations that you would make to the Task Force before we finalize all of this? Or do you have any additional thoughts that you are going to be offering to the Task Force in terms of the implementation of any of these regulations that may come about?

Mr. BYRNE. Senator, some of the things that we've detailed in our testimony include this whole question of suspicious reports. There is a combination of reports to get filed. You heard about the currency report where you check the suspicious transaction box.

Senator BRYAN. Yes.

Mr. BYRNE. That's not a mandatory duty. You don't have to check the box, but there is something called a criminal referral form, which includes a whole host of crimes including money laundering. We hope there will be some combination of those reporting schemes so that the banker knows that if it's a money laundering offense, we're to go with that form as opposed to trying to determine what's mandatory and what's voluntary. And I think there's some agreement within the Government to do that. That will be a major point for us to bring up in the Board meetings.

Senator BRYAN. What do your people use as a criteria for checking that suspicious transaction? In other words, what—you've indicated that you've been involved in training people to comply with the law. What generally are the parameters? What do you use in terms of general criteria for saying, look, this is, quote, a transaction that we suggest that you check as suspicious?

Mr. BYRNE. There are a combination of things. We realize that we don't have all the answers. So frequently, when we do our training, we invite the Government and they readily agree to come, whether they are Treasury officials or IRS officials, to conferences and programs to explain what we would call red flags or caution indicators. And I brought a couple with us just to mention briefly. These are the types of things we tell bankers to look out for.

One would be multiple account openings under multiple names. That does happen. That's certainly a red flag that something's occurring.

No references or documentation or reluctance to furnish data. The tellers are trained as much as possible, but there's a high turnover with front line tellers, and so frequently when they are asking the questions to fill out the forms, there is a reluctance on the part of an individual, whether it's legitimate reasons or not, to furnish that data. If that occurs, we suggest they check the box and make a phone call.

Seemingly false information is another caution indicator.

Frequent denomination exchange such as coming in with $100 bills that you want to change to $20's and lower denominations which obviously work more on the streets when you're dealing with drug trafficking proceeds.

Senator BRYAN. Would you file a suspicious notation even if it didn't reach the reporting threshold? Suppose, for example, there was an on-going series of transactions that you saw were below $10,000, as I understand, that is the reporting obligation, but suppose somebody was coming in fairly consistently with some pretty bizarre business transactions, $8,000, $8,000, $8,000. Would that cause you to take any action?

Mr. BYRNE. Absolutely, and that would probably go on the other form I referred to, the criminal referral form.

As a matter of fact, some of these individuals know the laws better than our bankers and will come in with $9,500 3 or 4 days in a row, because they know that there's that limit. Those types of situations occur frequently and we will report that activity.

The final one I would just mention is if you have a sudden large problem loan pay down, where someone comes in to pay off a loan quickly that's been a problem loan. This may be another indication of red flags.

I have to say that the Government has done a terrific job of trying to give us information to supplement what we believe is suspicious, and the two have to work together. We've seen a sea change in attitudes in the past 10 years, and I think it's helping us a lot.

Senator BRYAN. Mr. Byrne, let me make sure that I understand the mechanics. It's been a while since I've opened an account. Traditionally, at least in most banks that I've been familiar with, your new account, you may even have a new account person who is separate and apart from the teller window, and that's where you'd get all the information about the business or the account itself, in terms of background and that sort of thing. That, obviously, is an opportunity to trigger, as you've suggested, some unusual or suspicious circumstance.

With respect to deposits themselves, traditionally, if I still understand the way banking works, that is something that you would not go to the person that opened the account where you would have, in effect, the information or the database as required by banks to have a record of the account. That's where the actual transactions would prospectively occur at the teller window. What is the obligation of the teller?

Suppose that there is a $10,000 transaction that would indeed trigger a requirement. The teller, himself or herself, as I understand it, is required to make a report under the CTR's. Tell us what your internal process is. Do you—you don't stop the transaction and say, no, we can't do that, or we need to refer you to another person in the bank? You comply with the request, but then note it and record it for CTR's. Tell us how that generally works, if I have an understanding of this.

Mr. BYRNE. Sure. As you stated before, with the new accounts, that's something you do the first day you walk into the bank. When you come to the teller window, you're dealing with the frontline personnel.

No. 1, the currency report has to be signed off by more than frontline personnel, so there is an internal process where either a compliance officer or a security officer will look over the currency report before we send it into IRS.

If the teller makes a determination that something is suspicious, that person won't make the final determination. There will be a consultation with counsel and compliance officers, and at that point there will be a determination whether that was in fact a suspicious transaction.

So you'll have a double signing authority on the CTR. Also, if a customer won't provide documentation, we can't, as a bank, ask you to provide ID and you simply say, well, I provided it when I opened up the account. That's not good enough. We're not going to write on the form, signature card on file. We're going to make sure we determine it right then and there that you've given us proper identification.

So internally, it's a two- or three-step process. No one on the frontline will have the final determination of whether to report an activity as suspicious or as routine.

Senator BRYAN. You had indicated, although not a part of your request at this point from an industry perspective, but you'd like to see the reporting threshold increased perhaps. Do you have a number in mind?

Mr. BYRNE. We have recommended, on several occasions, either $20,000 or $25,000 for corporations; but not for individuals because over $10,000 in cash is still a high amount of money for someone to walk in off the street with. We're just suggesting that that be looked at seriously if the exemption system that we're changing doesn't result in a 20, 30, or 40 percent decrease in currency reports.

Senator BRYAN. I thank you very much.

We've been joined by our colleague on the Committee, Senator Moseley-Braun. I defer to her for any questions that she might have to ask.

OPENING STATEMENT OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman. I don't really have questions, and, frankly, I have an opening statement that I'm prepared to file.

As a former prosecutor, I know how important a Federal anti-money laundering law is and I know that this is a serious problem. Some estimates indicate that there could be as much as $300 billion spent in money laundering in a given year. That's even more than the Pentagon spends every year.

I know very well, however, how it is to be buried in paper work, and that the number of Currency Transaction Reports is growing at over 13 percent per year. And there are now about 9 million such reports filed each year.

There are, as I understand it, some 657 large companies, mostly retailers, who file over a thousand reports each, and that collectively, they account for almost 2.3 million of the 9 million Currency Transaction Reports filed.

I therefore strongly agree with you, Mr. Chairman, that the co-sponsors of this bill are to be congratulated for their effort. Certainly currency transaction reporting needs greater focus and that focusing the reporting requirements where the real need is will enhance law enforcement efforts while reducing the unnecessary paper work burden.

I think the goal that you set out in the legislation, reducing the volume of reports filed by depository institutions by at least 30 percent, is a goal that makes sense and one that will better enable us to fulfill the goal of the law and help address and detect money laundering where it occurs.

And so, Mr. Chairman, I would just want to congratulate you, and ask that my statement be filed for the record, and I have no questions really of the panel.

Senator BRYAN. Thank you very much, Senator Moseley-Braun. Your statement will be made a part of the record and we appreciate your attendance and participation in the hearing today.

Thank you.

Mr. Wray, just one last question before we conclude our hearing, a follow-up to Mr. Byrne's observation. What are the pros and cons, as you see it, in terms of lifting the corporate CTR level to $25,000, if that should ever become a serious proposal?

Mr. WRAY. Well, the pro would be that it would certainly eliminate many reports. As he mentioned, we issued a fact sheet in November 1993, indicating that raising the level to $20,000 would eliminate about 58 percent of the CTR's in the system, over half of them.

Senator BRYAN. About 58 percent?

Mr. WRAY. That's right.

Senator BRYAN. That would reduce the volume by——

Mr. WRAY. Oh, yes, it would reduce it by over half in one fell swoop. I think that figure may be a little high because there are some individual filers, but well over 90 percent of the CTR's are filed by businesses.

The con, I suppose, is that the amount of the transaction may not, per se, equate to its value for law enforcement purposes. The exemption process in the bill, I would say, not being a law enforce-

ment expert, is more tailored to really get at the question of law enforcement value and simply raising the level to $20,000 might run some risk of eliminating transactions that might have law enforcement value more so than the exemption process.

Senator BRYAN. I guess there is an arguable basis to index it in some way. The threshold exemption, in terms of real dollars, changes as inflation progresses. I mean these numbers are obviously far less in terms of spending or purchasing power today than they were at the time that they were enacted, so there may be some basis upon which to periodically make adjustments to and review that.

Mr. Faiss.

Mr. FAISS. Mr. Chairman, you asked about the difference between title 31 and regulation 6A. I should point out that there is one difference. Unlike title 31, Nevada does not require a CTR on verified gaming payouts.

And further, I'd like to say, that despite our pride in what we think is a great success of regulation 6A, the Treasury Department does think it can be enhanced, and we are in discussions with them to see how we might resolve those issues.

Senator BRYAN. First, let me ask you also, the Ratzlaf case, which you've heard discussed by both Mr. Byrne and Mr. Noble, have you had a chance to take a look at that case and has the industry taken a position with respect to its view in terms of modifying the Supreme Court's decision?

Mr. FAISS. I have examined that case, as Mr. Greathouse has done, and after surveying the industry, which was completed yesterday, we are authorized to state support for such an amendment.

Senator BRYAN. I appreciate that.

Any other comment or question, gentlemen?

[No response.]

If not, we thank you very much for your participation and your testimony. And this hearing will be adjourned.

[Whereupon, at 11:59 a.m., Tuesday, March 15, 1994, the Committee was adjourned, subject to call of the Chair.]

[Prepared statements, response to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF SENATOR DONALD W. RIEGLE, JR.

This morning the Committee will consider S. 1664, the Anti-Money Laundering Act of 1993. I am an original co-sponsor of this legislation and want to particularly compliment Senators Bryan and Bond for their leadership and efforts in this area.

The legislation under consideration this morning has the support of the Administration and would reform the process of filing Currency Transaction Reports. The bill establishes a system of exemptions under which transactions that are clearly of no interest for law enforcement purposes do not require the filing of a Currency Transaction Report. In addition, S. 1664 provides institutions the option of developing a list of regular business customers who, with the approval of the Treasury Department, would be exempt from these Currency Transaction Reports. This legislation would also require the Treasury Secretary to implement rule changes which will reduce the volume of Currency Transaction Reports by at least 30 percent. The bill would also make other changes to streamline the currency transaction reporting process and increase the ability of law enforcement agencies to make use of Currency Transaction Reports in criminal investigations.

It is my intention to move very quickly on this bill and I hope that we are able to consider it on the floor shortly after this morning's hearing.

PREPARED STATEMENT OF SENATOR ALFONSE M. D'AMATO

Thank you, Mr. Chairman. I want to commend you on holding this hearing today and for your co-sponsorship, along with Senators Bryan and Bond, of this legislation. This bill represents the latest in a series of legislative efforts in our fight against money laundering.

In recent years, Congress has passed legislation that made money laundering a specific criminal offense. Nevertheless, we should never lose sight of one thing—money laundering is a crime with resounding implications. Money laundering is more than a means of hiding the true source of proceeds; money laundering is a means of removing the criminal taint of drug trafficking and other criminal activity from the proceeds of those crimes. To the extent that criminals can launder money, they can legitimize the ill-gotten gains of their criminal enterprises. Money laundering is a means of making sure that crime does pay. As such, money laundering impacts on the safety of our streets, homes, and schools.

The key component of Congressional efforts toward money-laundering detection is the Bank Secrecy Act. The Bank Secrecy Act requires the reporting of certain financial transactions. The Bank Secrecy Act was intended to create a paper trail for cash transactions, to allow the tracking of ill-gotten proceeds as they re-enter the legitimate financial system. However, many tell us that this paper-trail goal of the Bank Secrecy Act has been "over-achieved."

Financial institutions that have to comply with the Bank Secrecy Act complain of the paper work burden that compliance creates, with no tangible benefits. Even many in law enforcement talk about the information-overload that the law currently creates—we are told that too much information with too little real law enforcement value enters the system, and the Bank Secrecy Act reporting requirements need to be modernized.

This bill is also intended to expand the scope of the Federal money laundering laws in order to address new trends, produce better coordination of law enforcement efforts and to potentially increase the involvement of the regulatory agencies in the money laundering detection effort.

I know that two of our colleagues—Senators Mack and Shelby—have pushed to reform the CTR filing requirements as part of their paper work reduction efforts. They deserve to be commended. Also, Senator Roth should be commended for his hard work on the Government Affairs Investigative Subcommittee on this issue.

If there is any subject within our Committee's jurisdiction on which there is true bipartisan agreement, it is this—our Nation must have effective tools to fight money laundering. The fight against money laundering is a part of the fight against drug trafficking and other criminal activity that impacts all of us. I look forward to hearing the testimony of our witnesses regarding this bill that is intended to modernize the weapons available for this fight.

PREPARED STATEMENT OF SENATOR CHRISTOPHER S. BOND

Mr. Chairman, thank you for holding this hearing today. Senator Bryan, Senator Riegle, and I introduced the Anti-Money Laundering Act of 1993, a bill to reduce the number of Currency Transaction Reports which banks have to file under the

Bank Secrecy Act, on November 17, 1993. I believe that this bill, which will be added to S. 1275, the Community Development, Credit Enhancement, and Regulatory Improvement Act of 1993, on the floor will help relieve bank regulatory burden, improve compliance under the Bank Secrecy Act, and better money laundering deterrence efforts.

Action must be taken to relieve the banking industry of the burden of unreasonable regulatory requirements it now faces. The bank regulators currently require all kinds of burdensome compliance reports, activities, and documents that cost significant amounts of time and resources. Consequently, banks are generating too many reports and other paper work of questionable value, instead of making loans.

In particular, to help combat money laundering, banks have to file a Currency Transaction Report (CTR) for all currency transactions over $10,000. The American Bankers Association estimates that it cost banks almost $130 million to file 9.2 million CTR's with the Internal Revenue Service in 1992. The utility to the Government of this massive number of reports has yet to be proven.

This bill will help to reduce drastically the number of useless CTR's which are filed with the Government, thus reducing, in part, bank regulatory burden. The Anti-Money Laundering Act of 1993 would create mandatory exemptions for transactions between depository institutions, transactions with any U.S. Government or agency, and transactions with any business or category of business where CTR's have little or no value for law enforcement purposes. In addition, Treasury would have the discretion to exempt transactions between a depository institution and its qualified business customers who most frequently engage in transactions which are subject to reporting requirements under the Bank Secrecy Act. I also look forward to identifying and making additional reforms to CTR requirements where the regulatory burdens on depository institutions are unreasonable and the usefulness to the Federal Government is not evident.

I am well aware of the serious problem this situation has created for the banking industry and have been in consultation with my colleagues on the Senate Banking Committee to find solutions. Bank regulatory reform is one of my highest priorities. I also consider it a key to economic growth.

A companion bill, H.R. 3235, has already been acted on in the House. I look forward to working with my colleagues in both the Senate and the House and with the new Administration on this bipartisan measure to relieve bank regulatory burden.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF SENATOR CAROL MOSELEY-BRAUN

Mr. Chairman, I am pleased to be here this morning as the Banking Committee considers, S. 1664, the Anti-Money Laundering Act of 1993. We have a good group of witnesses before the Committee this morning, and I look forward to their testimony.

As a former Federal prosecutor, I know how important a Federal anti-money laundering law is. I know money laundering is a serious problem. Some estimates indicate that there could be as much as $300 billion in money laundering annually; that's even more than the Pentagon spends each year.

I also know very well, however, what it means to be buried under paper work. I understand that the number of Currency Transaction Reports, used to report cash transactions of over $10,000, is growing at over 13 percent per year, and that there will be over 9 million such reports filed this year.

I also understand that 657 large companies, mostly retailers, filed over 1,000 reports each, and that collectively, they alone account for over 2.3 million of the 9 million Currency Transaction Reports filed.

I, therefore, strongly agree with you, Mr. Chairman, and with the cosponsors of S. 1664, Senators Bryan and Bond, that the currency transaction reporting needs greater focus, and that focusing the reporting requirement where the real need is will enhance law enforcement efforts while also reducing unnecessary paper work burdens. I think the goal you set out in the legislation, reducing the volume of reports filed by depository institutions by at least 30 percent, is a goal that makes sense, one that will better enable the law to fulfill its goal of helping us detect and address money laundering.

The bill mirrors the framework of the new exemption procedure the Task Force is recommending. However, there is no guarantee that banks will avail themselves of the improved exemption process. Many banks may determine it is simply easier and less costly to file. Nevertheless, Treasury is working to insure development of the simplest procedures possible, under clear guidelines, to encourage banks to take advantage of exemptions.

NEW CURRENCY TRANSACTION REPORT (CTR)

In section 2(c) the Secretary is directed to take action as may be appropriate to redesign the format or eliminate information of little value to law enforcement from the CTR. We are close to accomplishing this. The Task Force has redesigned the CTR and eliminated approximately a third of the information called for. We believe that this can be done without any significant detriment to the analytical use of the information. The new form is under review within the Government and will be presented to the Advisory Group in April. We believe that this measure will be very welcome by the affected industries.

SECTION 3—SUSPICIOUS TRANSACTION REPORTING

Another very complex issue is the question of suspicious transaction reporting. Alert and timely reporting of suspicious activity—cash and non-cash—to law enforcement is an essential complement to currency reporting. Treasury and Congress have listened to many complaints from financial institutions that the current system is too complicated and that many reports are not being acted upon by law enforcement. We agree that there is some merit to these complaints. The proposal in section 3, directing the Secretary to establish a single Government point for suspicious reports, is an expression of the Committee's concern, but does not rectify the situation.

The current procedure for reporting possible violations of money laundering and Bank Secrecy Act violations is cumbersome and confusing for the financial institutions. In some cases, a bank files more than one report on the same transaction and sends multiple copies of the report to different agencies. Treasury's goal is to improve the quality of what is filed and of law enforcement's response to it. At the same time, we want to interject needed efficiency into the reporting process. Our goal is that banks and other financial institutions file *one* report on a given transaction or situation and that only *one* copy of the report be sent to *one* place, such as FinCEN. The information would then be available to appropriate law enforcement and regulatory agencies through Treasury. We plan to impose mandatory reporting of suspicious activity by non-bank financial institutions under similar procedures.

The Task Force has developed some detailed recommendations in this area which are soon to be discussed with Justice and the bank regulatory agencies and will be explored with the BSA Advisory Group in April.

SECTION 4—MONEY LAUNDERING SCHEME DETECTION BY BANK EXAMINERS

Section 4 directs the Federal Reserve Board and the Office of Comptroller of the Currency to establish a pilot program to test the feasibility of using examiners to detect money laundering schemes in the banks they supervise. The parallel provision to this section, H.R. 3235, has been amended recently, and in my opinion improved, to give more specific direction to Federal regulators. The House version now requires that all Federal banking agencies must enhance the training of examiners and examination procedures and improve detection of money laundering and procedures for referring cases to law enforcement. This would be done in consultation with Treasury and law enforcement agencies. We recommend the House version.

SECTION 5—FOREIGN BANK DRAFTS

Under the BSA, Treasury requires that reports of cross-border transportations of monetary instruments in excess of $10,000 (the "CMIR" requirement) be filed with Customs. "Monetary instruments" is a term defined by statute to include currency or cash-equivalent bearer instruments such as traveler's checks or bearer checks and securities. The provision in section 5 would expand the definition to include instruments drawn on or by foreign financial institutions abroad whether or not in bearer form.

This is a direct response to the problem of drug money laundering through foreign bank drafts. Drug money launderers smuggle bulk currency or transmit it through a non-bank financial institution to foreign banks. They then purchase bank drafts or checks from the foreign banks, sometimes directly with the cash or sometimes after first depositing it to an account at the foreign bank. Some of these instruments resemble cashier's checks with a twist: They are dollar-denominated checks drawn by the foreign bank on its own account at a U.S. bank and sold to customers first

[illegible] Bearer Instruments. These instruments are frequently used to move the United States and their negotiable because except bank drafts and checks are generally not in bearer form, they are not currently subject to CMIR reporting.

Treasury believes the subjecting of instruments to cross-border reporting will contribute to deterring and detecting their use. Although it will not completely eliminate the problem and may lead to a significant increase in the number of CMIR filings.

SECTION 6—IMPOSITION OF BSA CIVIL PENALTIES BY BANKING AGENCIES

This section directs the Secretary to delegate the authority to assess BSA civil penalties to the Federal banking agencies: OCC, the Federal Reserve, OTS, FDIC, and NCUA. From the inception of the BSA, Treasury has delegated compliance and examination authority to these agencies.

Under section 6, the Secretary would be given complete discretion to set the terms and conditions for civil penalties, including the ability to reserve the authority to assess or review penalties over a certain dollar amount. The provision stems from Congressional criticism of the handling of civil penalties in the past by the Treasury Office of Financial Enforcement (OFE). I want to emphasize that past penalty processing delays have been corrected and that OFE has produced an unprecedented number of penalties in recent years.

Nevertheless, I am of the view that serious consideration should be given to delegation of this operational function not only to the banking agencies, but to IRS for the non-bank financial institutions and to Customs for CMIR violations. All of these agencies have penalty authority and experience under other statutes.

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[illegible] NBFI's subject to BSA with Treasury. [illegible] could be applied for failure to reg- [illegible] identification of all NBFI's and a

[illegible] program to start and maintain. [illegible] Nevertheless, Treasury

The bill mirrors the framework of the new exemption procedure the Task Force is recommending. However, there is no guarantee that banks will avail themselves of the improved exemption process. Many banks may determine it is simply easier and less costly to file. Nevertheless, Treasury is working to insure development of the simplest procedures possible, under clear guidelines, to encourage banks to take advantage of exemptions.

NEW CURRENCY TRANSACTION REPORT (CTR)

In section 2(c) the Secretary is directed to take action as may be appropriate to redesign the format or eliminate information of little value to law enforcement from the CTR. We are close to accomplishing this. The Task Force has redesigned the CTR and eliminated approximately a third of the information called for. We believe that this can be done without any significant detriment to the analytical use of the information. The new form is under review within the Government and will be presented to the Advisory Group in April. We believe that this measure will be very welcome by the affected industries.

SECTION 3—SUSPICIOUS TRANSACTION REPORTING

Another very complex issue is the question of suspicious transaction reporting. Alert and timely reporting of suspicious activity—cash and non-cash—to law enforcement is an essential complement to currency reporting. Treasury and Congress have listened to many complaints from financial institutions that the current system is too complicated and that many reports are not being acted upon by law enforcement. We agree that there is some merit to these complaints. The proposal in section 3, directing the Secretary to establish a single Government point for suspicious reports, is an expression of the Committee's concern, but does not rectify the situation.

The current procedure for reporting possible violations of money laundering and Bank Secrecy Act violations is cumbersome and confusing for the financial institutions. In some cases, a bank files more than one report on the same transaction and sends multiple copies of the report to different agencies. Treasury's goal is to improve the quality of what is filed and of law enforcement's response to it. At the same time, we want to interject needed efficiency into the reporting process. Our goal is that banks and other financial institutions file *one* report on a given transaction or situation and that only *one* copy of the report be sent to *one* place, such as FinCEN. The information would then be available to appropriate law enforcement and regulatory agencies through Treasury. We plan to impose mandatory reporting of suspicious activity by non-bank financial institutions under similar procedures.

The Task Force has developed some detailed recommendations in this area which are soon to be discussed with Justice and the bank regulatory agencies and will be explored with the BSA Advisory Group in April.

SECTION 4—MONEY LAUNDERING SCHEME DETECTION BY BANK EXAMINERS

Section 4 directs the Federal Reserve Board and the Office of Comptroller of the Currency to establish a pilot program to test the feasibility of using examiners to detect money laundering schemes in the banks they supervise. The parallel provision to this section, H.R. 3235, has been amended recently, and in my opinion improved, to give more specific direction to Federal regulators. The House version now requires that all Federal banking agencies must enhance the training of examiners and examination procedures and improve detection of money laundering and procedures for referring cases to law enforcement. This would be done in consultation with Treasury and law enforcement agencies. We recommend the House version.

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like cashier's checks. These instruments are transported back into the United States and then negotiated. Because foreign bank drafts and checks are generally not in bearer form, they are not currently subject to CMIR reporting.

Treasury believes that subjecting the instruments to cross-border reporting will contribute to deterring and detecting their use, although it will not completely eliminate the problem and may lead to a significant increase in the number of CMIR filings.

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Nevertheless, I am of the view that serious consideration should be given to delegation of this operational function not only to the banking agencies, but to IRS for the non-bank financial institutions and to Customs for CMIR violations. All of these agencies have penalty authority and experience under other statutes.

SECTIONS 7 AND 8—NON-BANK FINANCIAL INSTITUTIONS

Sections 7 and 8 address the problem of money laundering through certain NBFI's. For several years, the Committee and Treasury have grappled with this difficult issue. It is indisputable that as banks have become more active in the prevention and detection of money laundering, money launderers have turned in droves to the financial services offered by a variety of NBFI's, from casas de cambio to money transmitters and check cashers. The majority of these are legitimate businesses that furnish needed financial services to segments of the population who have limited access to banks or have limited access to banking services.

The question of how best to use our authorities and resources to deal more effectively with the problem is an issue on the agenda for the Task Force. These institutions—money transmitters, currency exchanges, check cashers, large sellers, and redeemers of traveler checks and money orders—are subject to BSA recordkeeping and reporting, with compliance and examination authority resting with the IRS Examination Division. While IRS has bolstered resources for this function, the task is daunting. Estimates range from 50,000–150,000 of these institutions nationwide. The job cannot be done by Treasury/IRS alone. State licensing and regulation is essential to insure that these businesses are run to offer legitimate financial services and that they not be purchased or exploited for illegal purposes. State licenses and regulation is meant to complement, not substitute, the BSA compliance responsibilities of the IRS.

Many States have made strides to license and examine various categories of NBFI's. Texas, Arizona, New York, and Florida have made significant progress. Nevertheless, in the majority of States these institutions operate with little more than a general business license.

Section 7 expresses the view of Congress that there be uniform licensing and regulation of NBFI's including provisions under State law for civil and criminal penalties for failure to implement BSA compliance programs and criminal penalties under State law for failure to obtain a license. The Secretary of Treasury is to report to Congress after 3 years, and annually thereafter, on the progress made by the States.

This will be a very extensive project for Treasury, but one which builds on our ongoing outreach efforts with States and will prove to be a worthwhile undertaking. At the same time, Treasury will move forward to require suspicious reporting and compliance programs by NBFI's, continue to educate the NBFI's on their vulnerabilities and responsibilities, and investigate and penalize the NBFI's for money laundering and BSA violations.

Section 8 requires Federal registration of NBFI's subject to BSA with Treasury. Criminal and civil penalties and civil forfeiture could be applied for failure to register. Potentially, this will result in the reliable identification of all NBFI's and a means to eradicate illegitimate ones.

This will be a very expensive and labor-intensive program to start and maintain. A number of practical details will need to be worked out. Nevertheless, Treasury

is prepared to undertake this project. One option we may wish to consider, which would require legislative authority, is a registration fee which would be available to offset the costs of administering a registration program.

SECTION 9—CASHIER'S CHECK STUDY

This section directs Treasury to study and report to Congress on the use of cashier's checks in money laundering and the possibility of additional recordkeeping measures for cashier's checks. For instance, one suggestion has been to require banks to make copies retrievable by customer name or account rather than just chronologically as is generally the practice. The Task Force did not think that, in practice, the way cashier's checks are maintained presently pose significant problems. While we are not sure a special study is called for, we welcome recent amendments to H.R. 3235, under which this study would be done by GAO.

OTHER LEGISLATIVE MEASURES

As the Committee is aware, there are a few other legislative actions, some outside the jurisdiction of this Committee alone, necessary for Treasury anti-money laundering programs.

Ratzlaf Response

First and foremost, we have a critical need for a legislative amendment to address the problems posed by the *Ratzlaf* case which was decided by the Supreme Court on January 24, 1994. The *Ratzlaf* decision, as was widely reported in the press, was a major setback to the Government's anti-money laundering efforts. This decision will make the prosecution of structuring to avoid the currency transaction reporting under 31 U.S.C. 5324 substantially more difficult. Prior to *Ratzlaf*, it was enough to establish that a person who structured a transaction to evade the reporting requirements knew that the financial institution had a reporting obligation. After *Ratzlaf*, a prosecutor must establish that the person knew that structuring itself was a crime.

We estimate that *Ratzlaf* may have an adverse affect on some 200 pending cases and no doubt dozens of others will not be brought because of this decision. Treasury and Justice have worked with House Banking on a *Ratzlaf* amendment which is now part of H.R. 3235. We understand and welcome the fact that the Committee intends to include a similar amendment to S. 1664.

BSA Summons Authority

Treasury would like to seek amendments to the BSA summons authority in 31 U.S.C. 5318 to make it a more effective tool to investigate BSA violations and to assist Treasury in responding to reports of suspicious activity, such as customer structuring of transactions to avoid triggering CTR reporting. The current authority is very limited in scope and purpose. It can only be used to request documents or take testimony from financial institutions and their employees and can only be used for civil purposes, for instance to perfect information for a civil penalty or civil forfeiture. What Treasury needs is a general purpose summons that can be used similar to an IRS summons, for civil and criminal purposes, up until the point the matter is referred to Justice for litigation or prosecution.

In suspicious transaction situations, despite the statutory protection from customer liability, financial institutions are reluctant to give full information about a customer and his transactions without legal process. If a suspicious call comes or the suspicious box is checked on a CTR, an IRS criminal investigation agent cannot use the BSA summons to obtain enough information to assess whether or not the matter is worth pursuing. If the summons were used and the matter is ultimately developed as a criminal rather than civil case, IRS would be subject to legal challenge for improper use of a civil enforcement authority. The only course now is to involve an Assistant U.S. Attorney, open a case, and obtain a grand jury subpoena. This is an imposition on the agent's and the prosecutor's time and on the judicial system and simply cannot be done routinely in all suspicious situations. Treasury would like a simpler, less cumbersome method for evaluating reports of suspicious transactions.

The limitation to financial institutions and their employees is also problematic. The focus of Treasury's interest in BSA violations, especially CMIR violations, frequently involve persons beyond the financial institutions. Treasury needs to be able to use summons authority with respect to the person conducting the transaction, his principals, and other businesses.

We are seeking administrative clearance on this matter. The Department of Justice has expressed reservations and concerns.

Smuggling of Currency through the Mail

As BSA compliance by banks has improved, the smuggling of bulk currency and monetary instruments, such as money orders, has become rampant. An amendment made to 31 U.S.C. 5317 in 1986 specifies that the warrantless border search authority of the Customs Service extends to search for unreported currency or monetary instruments. However, the Postal Service has taken the position that this authority does not extend to letter class mail and packages. This creates an enormous loophole.

Envelopes and packages being transported by private couriers, common carriers, or by any means of transportation are subject to search as are envelopes and packages accompanying international travelers, or on their persons. Customs can only open first class packages with a search warrant based on probable cause that the package contains unreported currency or monetary instruments.

We have been working with the U.S. Postal Service on a legislative solution. We hope to be able to provide the Committee with statutory language that will protect legitimate privacy interests in outbound mail without sacrificing law enforcement's ability to seize the illegal-source currency and monetary instruments.

8300 Dissemination and IRS Undercover Offset

Finally, there are two provisions pending with the House Ways and Means Committee introduced by Congressman Pickle in 1993 as H.R. 22. These provisions are supported by the Administration but have yet to be acted upon to the detriment of our programs.

The first provision relates to the use and dissemination of reports of cash received over $10,000 filed by trades or businesses, under section 6050I of the Internal Revenue Code. Currently, the tax disclosure provisions of IRC §6103 effectively limit the use of these reports for tax enforcement purposes. The reports have the same analytical use to law enforcement as currency reports filed by financial institutions and should be able to be used and analyzed to the same extent. Therefore, Congressman Pickle and the Administration seek authority to disseminate and use the reports under the same guidelines and safeguards as BSA reports—to Federal, State, and local agencies for criminal and regulatory purposes. Temporary authority to disseminate to Federal agencies for criminal purposes expired last November. Since that time, the analytic work on these valuable reports by FinCEN and by other investigatory agencies outside the IRS, has come to a standstill.

The second provision in H.R. 22 would give IRS the same authority as other law enforcement agencies with substantial money laundering investigative authority to be exempt from certain fiscal and administrative provisions applied to day-to-day Government activities. Key among these provisions is the authority to offset expenses from undercover operations from the proceeds of the operation. Without this authority large-scale undercover operations, such as establishing front currency exchange business, are cost prohibitive. This authority was also given in 1988 on a temporary basis but has expired.

CONCLUSION

I hope that I have conveyed that it is not business as usual at the Department of the Treasury. We are open to new ideas and are committed to better communication with the affected public. The establishment of the Task Force and BSA Advisory Group are testament to our commitment.

We welcome the Committee's partnership with Treasury in improving the efficiency and effectiveness of our programs. Treasury and the Committee are working toward a common goal—to reach a better balance and perspective on the roles and responsibilities of the Government and financial institutions in the fight against money laundering and better deployment of our respective skills and resources.

United States General Accounting Office

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Testimony

Before the Committee on Banking, Housing and Urban Affairs
United States Senate

For Release on Delivery
Expected at
10 a.m., EST
Tuesday,
March 15, 1994

MONEY LAUNDERING

The Volume of Currency Transaction Reports Filed Can and Should Be Reduced

Statement of Henry R. Wray, Director, Administration of Justice Issues, General Government Division

GAO/T-GGD-94-113

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SUMMARY OF STATEMENT

The Bank Secrecy Act is a major weapon in the Government's efforts to combat money laundering. The Act's implementing regulations require banks and other financial institutions to file a *Currency Transaction Report* (CTR) for each transaction that involves $10,000 or more in currency. The number of CTR's filed annually has steadily increased in recent years. As of April 1993, almost 50 million CTR's had been filed. The total could exceed 92 million in another 3 years.

The Senate Committee on Banking, Housing, and Urban Affairs asked GAO to assess the Government's use of CTR's in relation to a bill, S. 1664, which includes provisions designed to reduce the filing of CTR's on routine business transactions that lack law enforcement value.

The Internal Revenue Service estimates that between 30 and 40 percent of the CTR's filed are reports of routine deposits by large, well-established retail businesses. These CTR's impose costs on the Government and the Nation's banking industry, but they are unlikely to identify potential money laundering or other currency violations.

GAO's analysis of CTR filings confirms that the volume of CTR's could be substantially reduced without jeopardizing law enforcement needs. In fact, GAO's work indicates that the large volume of CTR's in the database makes analysis difficult, expensive, and time-consuming. Therefore, eliminating routine CTR's should not only reduce Government and industry costs, but also enhance the usefulness of the database by enabling it to better focus on those CTR's that are relevant for law enforcement purposes.

Treasury Department regulations now authorize banks to exempt routine transactions from reporting under certain conditions. However, according to Treasury officials and banking industry representatives, most banks are reluctant to use this exemption authority because of difficulty in understanding the exemption procedures and concern that they may incur liability for granting improper exemptions.

S. 1664 contains several provisions designed to address these problem's and encourage greater use of exemptions to eliminate CTR's for routine transactions that have no law enforcement value. GAO supports these provisions.

Mr. Chairman and Members of the Committee:

We are pleased to appear before you to discuss some of our work concerning Currency Transaction Reports (CTR's) required by the Bank Secrecy Act, in relation to S. 1664. Among other things, S. 1664 contains provisions designed to reduce the filing of CTR's on routine business transactions that have no value for law enforcement purposes. Our testimony today is based on the previous GAO reports and testimony listed at the end of this statement.

Money laundering supports a wide range of illegal activities—basically any crime where profit is the primary motive. Consequently, combating money laundering is a vital component of this country's war on crime. In October 1992, we reported that Federal law enforcement agencies have found Bank Secrecy Act reports, and especially CTR's, extremely useful in identifying, investigating, and prosecuting money laundering operations or any other criminal activity generating large amounts of cash. The data are also used to identify and trace the disposition of proceeds from illegal activity for possible seizure and forfeiture.

It is important that optimal use be made of the financial intelligence data provided by CTR's. As we testified last May, the volume of CTR's filed annually has been steadily increasing. The number of reports then on the computer database—almost 50 million—could nearly double in 3 years. The large volume of reports has made analysis difficult, expensive, and time-consuming. Moreover, many of the reports being filed are of normal business transactions that could have been exempted from being reported. CTR's that report normal business transactions are of no value to law enforcement and regulatory agencies in detecting money laundering activity.

FEDERAL EFFORTS TO FIGHT MONEY LAUNDERING

Money laundering is the disguising or concealing of illicit income to make it appear legitimate. Although precise figures are not available, Federal law enforcement officials estimate that between $100 billion and $300 billion in U.S. currency is laundered each year. The methods used can vary from extremely complex schemes involving sham corporations to something as simple as purchasing expensive commodities with cash.

The process of money laundering has been broken down into a number of steps. It is generally agreed that the point at which criminals are most vulnerable to detection, is "placement." Placement is the concealing of illicit proceeds by (1) converting the cash to another medium that is more convenient or less suspicious for purposes of exchange—such as property, cashier's checks, or money orders—or (2) de-

positing the funds into a financial institution account for subsequent disbursement. Because of the problems associated with converting large amounts of cash that are often in small denominations, placement is perhaps the most difficult part of money laundering and is currently the primary focus of U.S. law enforcement, legislative, and regulatory efforts to attack money laundering.

Federal efforts to detect the placement and track the flow of large deposits of money and monetary instruments were significantly enhanced with the enactment of the Bank Secrecy Act (BSA) in 1970. The Act requires individuals as well as banks and other institutions, such as check cashing businesses, currency exchanges, and money transmitters, to report large foreign and domestic financial transactions to the Department of the Treasury. Treasury regulations implementing the Act require four reports:

—*Currency Transaction Report,* Internal Revenue Service (IRS) Form 4789;
—*Currency Transaction Report by Casino,* IRS Form 8362;
—*Report of International Transportation of Currency or Monetary Instruments,* Customs Form 4790; and
—*Report of Foreign Bank and Financial Accounts,* Treasury Form TDF 90–22.1.

By far, the most frequently filed report has been the Currency Transaction Report. As of last May, over 95 percent of the 52 million BSA reports filed were CTR's. Financial institutions and certain types of businesses must file a CTR with IRS for each deposit, withdrawal, exchange, or other payment or transfer by, through, or to such financial institutions or businesses that involves more than $10,000 in currency.

The financial institutions required to file CTR's—such as banks, thrifts, and credit unions—are subject to examination for compliance with BSA reporting requirements by their regulatory agency. Businesses required to file—such as check cashing operations, currency exchanges, and money transmitters—are subject to compliance examinations by IRS.

Treasury and law enforcement officials generally believe that, in the past, banks and other traditional financial institutions were the primary means used by money launderers. These officials also believe that increased efforts by Federal regulatory and law enforcement agencies, as well as enhanced cooperation by the banks themselves, have significantly improved compliance with the reporting requirements, making it much more difficult to use these institutions for money laundering purposes.

The Department of the Treasury has reported that improved compliance with BSA reporting requirements is reflected by an increase in the number of reports filed. In 1992, 8.97 million CTR's were filed with IRS, almost 5 times the number filed in 1985. Since 1987, annual filings have increased at an average rate of 12.7 percent. As of April 1993, there were 49.8 million CTR's in the IRS computer database. If this historical pattern continues, the total could exceed 92 million in 3 years. Figure 1 shows the growth in the number of CTR's on file in the past several years and the projected size of the database in 1996.

Filing CTR's represents a significant investment in costs and resources to financial institutions and the Federal Government. On the basis of a poll of its members, the American Bankers Association estimated in 1991 that it costs a bank between $3 and $15 to file a CTR, depending upon the extent to which an automated filing system is used. IRS estimated that in fiscal year 1992 it cost $2 per CTR to process the reports and store them on the computer.

Law Enforcement Use of BSA Financial Intelligence Data

Duplicate databases of all of the BSA reports are stored on computers at two Treasury computer facilities: the Detroit Computing Center operated by IRS and the Treasury Enforcement Communications System (TECS) in Newington, VA, which is operated by the U.S. Customs Service. Access to the BSA reports at both facilities is available to authorized users through a network of computer terminals. As of February 1993, slightly more than 10,000 staff, almost all of them IRS employees, were authorized access to BSA data at the IRS Detroit Computing Center. While most of the IRS staff accessing the data use the information for tax administration purposes, almost a third of the authorized users, or 3,287, are assigned to IRS' Criminal Investigation Division and use the data for law enforcement purposes.

filed a report or been the subject of a report. Table 2 shows the number of times BSA reports were accessed for law enforcement purposes during 1992.

Table 2: Access to BSA Reports at Treasury Computer Facilities for Law Enforcement Purposes, Calendar Year 1992

User agency	Detroit Computing Center		TECS	
	Sessions	Queries	Sessions	Queries
IRS	43,090	800,627	142,619	283,730
Regulatory agencies[a]	1,057	7,695	-0-	-0-
FinCEN	2,433	23,163	46,604	173,465
BATF	-0-	-0-	14,170	40,968
Customs Service	-0-	-0-	393,376	1,152,296
Secret Service	-0-	-0-	1,439	4,748
Treasury - other	-0-	-0-	91	274
Totals	46,580	831,485	598,299	1,655,481

[a]Includes Treasury's Office of Financial Enforcement, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the Securities and Exchange Commission.

Note: Sessions are the number of users signing onto the system. Queries are the number of personal identifiers (e.g., names, zip codes, etc.) searched for.

Source: GAO analysis of IRS and Customs data.

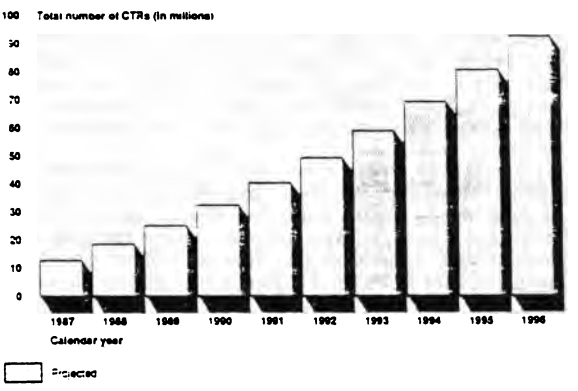
While access to the BSA data through the Treasury facilities is generally limited to Federal authorities, FinCEN serves as an access mechanism for both Federal and State authorities. In 1992, FinCEN received 3,208 quick turnaround requests for BSA and other data. Table 3 shows the source of these requests. FinCEN also receives requests for more in-depth analysis of this data.

Table 3: Requests for BSA Data Through FinCEN Received During Calendar Year 1992

Source	Number of requests
Treasury Dept. agencies	831
Justice Dept. agencies	801
State agencies	677
Postal Inspection Service	340
INTERPOL	113
Defense Dept. agencies	103
Financial regulatory agencies	90
Other	253
Total	3,208

Source: GAO analysis of FinCEN data.

Figure 1: Historic and Projected Growth of the CTR Database



Note: We estimated the CTR filings for 1993 to 1996 by applying a simple statistical regression to the 1987 to 1992 filings. These estimates are subject to forecast error.

Source: GAO analysis of IRS data.

The BSA reports at the Customs facility are used only for law enforcement purposes. As of February 1993, more than 10,000 staff were authorized access to BSA data at this facility, all of them assigned to Treasury agencies. Table 1 lists the number of authorized users by agency.

Table 1: TECS Users Authorized Access to BSA Reports as of February 1993

Agency	Number of authorized users
Customs	4,271
FinCEN	120
BATF	3,479
IRS	2,623
Secret Service	24
Office of Financial Enforcement	1
Total users	10,518

Source: U.S. Customs Service.

BSA reports, especially CTR's, are used by law enforcement in several ways. Some Federal agencies analyze them on a strategic level. For example, Treasury's Financial Crimes Enforcement Network (FinCEN)[1] prepares reports assessing the threat from money laundering operations to particular geographic areas or for a particular State based on the number and type of CTR's filed in the region. Some agencies analyze the reports on a "proactive" basis. IRS criminal investigators, for example, routinely perform analyses of CTR's to identify investigative leads based on certain criteria. Law enforcement officials agree, however, that by far the biggest use of the data is in a "reactive" manner, where a name or other form of identification of a suspect is known and a search of the data is made to determine if the suspect has

[1] FinCEN is a relatively small Treasury organization established in 1990 to support Federal, State, local, and foreign law enforcement agencies by analyzing and coordinating financial intelligence.

Under guidelines promulgated by the Assistant Secretary of the Treasury (Enforcement), IRS, and Customs may also disclose BSA data to State or local law enforcement agencies on the same case-by-case basis that FinCEN does. In October 1992, we reported the extent to which State law enforcement agencies were requesting and utilizing BSA reports obtained from these sources. IRS informed us that from April 1990 through December 1991, State and local law enforcement authorities in 24 States made 116 requests for BSA data. Customs officials estimated that they normally receive between 200 to 300 requests from State and local authorities a year.

Our October 1992 report also identified six States—Arizona, California, Florida, Illinois, Maryland, and New York—that have agreements with Treasury that permit them to receive CTR's and other BSA reports relating to the State already on magnetic tape, thus enabling them to process the data at their own computer facilities. Four other States—Georgia, Nebraska, North Carolina, and Utah—obtain CTR's by requiring that filers send copies of the reports filed with Treasury to the State.

FACTORS AFFECTING THE USEFULNESS OF BSA DATA

Our previous work indicates that the usefulness of the CTR database is limited because

—access to the data, particularly by State law enforcement agencies, is too cumbersome; and

—the volume of data collected, processed, and stored has become extremely large, making the database cumbersome to handle.

Treasury and FinCEN are currently evaluating and testing several initiatives that would facilitate access to CTR data by State law enforcement agencies. We believe the initial results are very encouraging. There remains, however, the problem of the ever-increasing volume of CTR's being filed.

As previously mentioned, there were almost 50 million CTR's on Treasury's computers as of April 1993. This number could nearly double by the end of 1996. Even with computers, the extensive size of the BSA database makes intelligence analyses of the reports—particularly proactive analyses—difficult, expensive, and time-consuming. For example, FinCEN has developed a computer program for identifying potential suspects based on trends and other characteristics of reports. However, given the size of the database and FinCEN's computer capabilities, the system is unable to use all of the historical data and is limited to the more recent data.

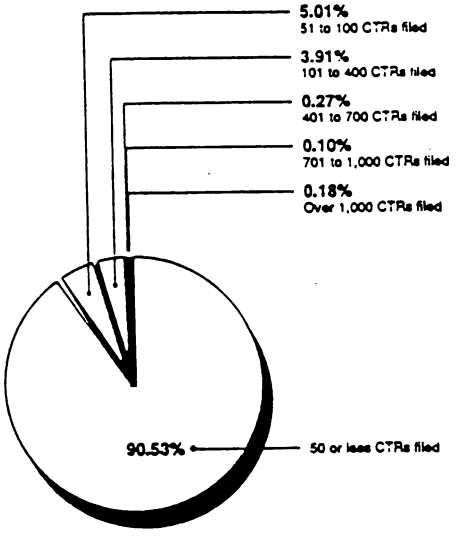
IRS officials have estimated that between 30 and 40 percent of the CTR's filed are reports of routine deposits by large, well-established, well-recognized, retail businesses each with a number of chain stores. IRS and Treasury recognize that these kinds of CTR's (1) are less likely to identify potential money laundering or currency violations, (2) increase the Government's cost to process the reports, and (3) place an unnecessary reporting burden on the Nation's banking industry.

Treasury has issued regulations that authorize banks to exempt certain businesses from the reporting requirements under certain conditions. We have been told, however, by Treasury and banking industry spokespersons that most banks are reluctant to use this exemption authority because of difficulty in understanding the exemption procedures and concern that they may be liable for penalties if they improperly grant exemptions. We have also been told that many banks use automated systems that make reporting all transactions easier and more cost-effective than dealing with exemptions.

In November 1993, we reported on the characteristics of CTR's filed in 1992. The data that we developed support IRS' estimate that 30 to 40 percent of the CTR's filed each year represent normal business transactions and meet the exemption criteria. Consequently, the potential exists to significantly reduce the number of CTR's filed annually.

Of the 8.98 million CTR's filed during 1992, 98 percent were filed by banks. Many of the CTR's could be eliminated by increasing the reporting threshold. As shown in figure 2, over half of the CTR's were for transactions of $20,000 or less.

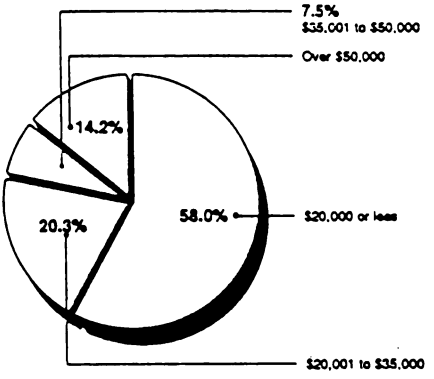
Figure 3: Distribution of 364,310 Businesses With CTRs Filed in CY 1992, by Number of CTRs Filed



Source: IRS Detroit Computing Center.

Businesses accounted for 8.29 million (92.3 percent) of all CTR's filed and for $ 11.8 billion (98.6 percent) of the total dollar amount of transactions reported. A total of 364,310 businesses were the subjects of the reports. As shown by figure 3, most of these businesses had 50 or fewer CTR's filed.

Figure 2: Distribution of 8.98 Million CTRs Filed in Calendar Year 1992, by Transaction Amount



Source: IRS Detroit Computing Center.

When a CTR identifies more than one business or individual, a separate record is established in the database for each entity shown on the report. The 8.29 million CTR's filed on businesses resulted in 9.2 million records. The 100 businesses listed on the most CTR's during 1992 accounted for 1.2 million (13 percent) of the 9.2 million business records. These 100 businesses, primarily chain stores and restaurants, also accounted for $89.7 billion (22 percent) of the $411.8 billion total transaction amount reported for businesses. Most of the transactions reported for these 100 businesses (94.9 percent) were deposits.

PROVISIONS OF S. 1664

S. 1664 contains several provisions that, while recognizing the value of CTR's, emphasize the need to reduce the number filed by ensuring that those transactions that could be exempted are exempted. The bill requires the Secretary of the Treasury to exempt certain categories of transactions from reporting and authorizes the Secretary to exempt certain other transactions from reporting based on information submitted by depository institutions. The bill shields institutions from liability for failing to report an exempted transaction unless the institution knowingly filed false or incomplete information or had reason to believe that the exemption criteria were not met. The bill also establishes a goal for reducing the number of CTR's, using the mandatory and discretionary exemptions, by at least 30 percent of the number filed during the year preceding its enactment.

We support these provisions. It is clear that banks are not utilizing the exemption process to the extent they could in order to reduce the volume of CTR's filed. The bill addresses some of the factors that appear to underlie failure to grant more exemptions now. We believe any actions taken to increase the use of legitimate exemptions will help to both eliminate unnecessary costs and ensure that the CTR data collected will have maximum value to law enforcement authorities.

This concludes my statement, Mr. Chairman. We would be pleased to respond to any questions.

PREPARED TESTIMONY OF JOHN J. BYRNE

ON BEHALF OF THE AMERICAN BANKERS ASSOCIATION

Mr. Chairman and Members of the Committee, I am John J. Byrne, Senior Federal Legislative Counsel with the American Bankers Association in Washington, DC and a member of the Bank Secrecy Act Advisory Board that was recently announced by Treasury Secretary Lloyd Bentsen. I appreciate the opportunity to testify on behalf of the American Bankers Association on S. 1664, the Anti-Money Laundering Act of 1993. The ABA is the national trade and professional organization for America's commercial banks. The members of the American Bankers Association range in size from the smallest to the largest banks, with 85 percent of our members having assets of less than $100 million. Assets of our members comprise over 90 percent of the total assets of the commercial banking industry.

The American Bankers Association has long been involved in the debate on how to make Bank Secrecy Act (BSA) compliance and money laundering deterrence more efficient. We welcome the opportunity to discuss the critical issue of how the Government handles the large volume of information that it receives from financial institutions as well as our efforts in detecting and preventing money laundering. The U.S. banking industry applauds all efforts to prevent our financial system from being used as havens for drug dealers. We believe that there is a need to review all of the requirements currently in place (whether legislative or regulatory) in order to insure that we are not unduly hindering the U.S. financial system, while adding little to our country's law enforcement efforts. We are pleased that the Treasury Department, under the direction of Assistant Secretary Noble, agrees with the need for BSA review. Most importantly, we strongly support S. 1664 as an approach that goes a long way toward fixing the current reporting system.

ASSOCIATION ACTIVITY

The American Bankers Association has been involved in money laundering deterrence since the mid-1980's. Whether it has been testifying before the Congress or State legislatures, submitting written comments on regulatory proposals, or training bank employees, our association has been committed to active cooperation to stop the laundering of monies of drug dealers through financial institutions. The ABA and the industry as a whole understands the challenge facing law enforcement officials in attempting to combat drug trafficking and organized crime. The use of banks as havens for drug money is as abhorrent to us as bankers, as it is to the

public in general. Therefore, we are pleased to report that our industry's response has been extensive, effective, and ongoing. Mr. Chairman, we share the Committee's goal of developing a more efficient system.

Since 1985, ABA has trained well over 100,000 financial institution employees on the Bank Secrecy Act, the Money Laundering Control Act, and all the applicable law, and regulations designed to solve this problem. The banking industry has achieved a high level of awareness of the laws and regulations regarding money laundering and our association has contributed significantly to that effort. During the debate on expanding the Bank Secrecy Act, our association worked closely with the Congress, various regulatory agencies, including the Treasury Department and others, in attempting to devise methods to deter money laundering. While we have opposed proposals that were seen as ineffective, the industry *did* support the creation of several statutes making money laundering and structuring of currency transactions Federal offenses with strong penalties. In February 1989, the American Bankers Association was the first trade association to create a task force on money laundering.

Mr. Chairman, we have been frustrated at the amount of routine reports filed by our industry and their limited utility to the Government. While the value to law enforcement of these reports is frequently hampered by diminished resources the reports themselves are adding to the problem. In addition, there are too many agencies responsible for money laundering deterrence and this detracts from Government efforts at eliminating the problem. We constantly hear from bankers about confusing and often times conflicting interpretations received by our members on the rules and regulations that guide our industry. This current state of affairs not only can result in unfair examination ratings and civil penalties, but it can actually impede the ability of the United States to effectively fight the war on drugs. However, we are beginning to see improvements.

CURRENCY TRANSACTION REPORTING

On October 26, 1970, the Bank Records and Foreign Transactions Act, commonly referred to as the "Bank Secrecy Act" was signed into law.[1] This law was enacted to "require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." The ABA believes that the regulations promulgated under this law are often not consistent with those goals established in 1970.

Instead, changes to the Bank Secrecy Act (BSA) over the years, have been a patchwork of regulations and laws that have added responsibilities to financial institutions without any thorough analysis of whether the law has fulfilled its intended purpose. We are pleased to note, however, that the Treasury Department has finally undertaken a review of this 24 year old law.

In 1993, the industry filed an estimated 10.1 million Currency Transaction Reports (CTR's) with the Internal Revenue Service on routine cash transactions. A 1992 ABA survey found that for front-line bank staff, filling out Currency Transaction Reports is the most time consuming compliance burden. Our survey showed that banks fill out CTR's annually at a cost of almost $130 million. For the 368 banks over $1 billion in asset size, the burden was especially costly—they filed 4.5 million CTR's at a cost of about $72 million.

The industry spent almost $10 million in 1992 alone on software and hardware to handle Bank Secrecy Act compliance. While the banking industry is committed to fighting money laundering, from the comments received, it is clear that bankers believe the benefits to law enforcement do not justify the cost burden placed on banks. The frustration is clearly evident in the following comment from a banker:

> "We once had a structured currency transaction. A customer went to three of our branches to withdraw in excess of $10,000 cash. The bank has a system in place to identify multiple transactions. When the transaction was detected, a call was placed to the Government because of it being a suspicious transaction. Approximately 2 months later, the Government sent someone out to investigate the transaction. The investigator stated that the $12,000 involved was not large enough to bother with. What was our risk if not reported?"

Another banker respondent summed it up as follows:

> "Given the volume of CTR's generated by the Bank Secrecy Act, one would expect an impact on the drug war. This evidently is not the case. In spite of the millions of forms compiled annually, there are few, if any, convictions generated by the database. While recognizing the value of CTR filing as a deterrent to crimi-

[1] P.L. 91-508.

nal activity, for the more sophisticated money launderer, it serves as an impetus to creativity."

Large banks in urban areas find the burden particularly costly. For example, one banker responding to our survey said:

"Our institution processes thousands of large commercial deposits daily, many grocery stores and retail chains. Many of these accounts cash checks for a fee as a service for their customers.

"As our State does not license check-cashing, these deposits are reported on a CTR every day. We process 4,000 CTR's annually. Of these, at least 50 percent are repetitive filings on long-term retail merchants that have banked here for many, many years. We estimate it takes an equivalent of one full-time employee to create the CTR's, ½ full-time equivalent employee to review and audit our CTR filings. Additionally, combining all Treasury log requirements and filing of criminal referrals due to structuring, another ½ full-time equivalent employee is required. Two employees—one regulation."

The time for completing a CTR ranges from 20 to 30 minutes. Based on those parameters, financial institutions believe that it costs anywhere from $3 to $15 (exclusive of overall BSA compliance costs) to file a CTR. The cost range depends on whether the filing is manual or by magnetic media. The California Bankers Association polled its members and came up with costs as high as $60 per CTR. However, that all seems destined to change. We would like to turn our comments to S. 1664.

S. 1664

The Anti-Money Laundering Act of 1993 will help in a drastic reduction of routine or useless Currency Transaction Reports. As Senator Bryan pointed out in his floor statement announcing the bill's introduction:

"The excessive number of reports filed, many of which clearly have no bearing on Federal money laundering enforcement, place a great strain on both Federal investigators and the business which must file the CTR's."

Senator Bond echoed this problem when he said that "banks are generating too many reports and other paper work of questionable value instead of making loans."

We are particularly pleased with the requirement in section 2 mandating that the Treasury reduce the number of CTR's filed by banks by a minimum of 30 percent. This is an important call to the Government to ensure that CTR reports are used to deter and investigate money laundering. The system change to the CTR exemption process will greatly assist in that goal.

CTR EXEMPTIONS (SECTION 2)

As the Committee knows, Bank Secrecy Act reporting requirements permit "exemptions" from CTR reporting under certain circumstances. The banking industry has long been confused over what is seen as inappropriate application of the Treasury exemption authority for certain businesses. Specifically, there are categories of businesses which financial institutions can exempt from the cash reporting requirements which seem to fly in the face of law enforcement needs (i.e., race tracks). In addition, various law enforcement agencies such as the Drug Enforcement Administration (DEA) and the U.S. Customs Service have frequently told bankers to narrow or extremely limit the amount of companies that are placed on their exemption lists because of fears that one-time legitimate businesses can believe fronts for illegal operations. Bank examiners frequently misunderstand the nature and purpose of exemptions. Routinely, ABA hears reports from its members who have been criticized by bank examiners for "malicious compliance" when they restrict or eliminate exemptions. Yes, elimination of exemptions increases CTR volume, but compliance costs may actually decrease, and most importantly, the risk of a severe penalty is avoided.

We believe that the existing exemption mechanism no longer works and should be revamped so that banks are required to report only transactions that have a "high degree of usefulness in criminal, tax, or regulatory investigations" as required by statute. Section 2 of the bill appears to be the answer for both banks and law enforcement.

Section 2 creates a two-tier exemption system. Mandatory exemptions will be designated by the Treasury and include all transactions which a depository institution has with (1) another depository institution; (2) any U.S. Government department or agency, or any political subdivision of any State, including an interstate compact between two or more States, which exercises any governmental authority on behalf of the United States, the State, or the political subdivision; or (3) any business or category of business where the CTR's have little or no value for law enforcement purposes. The Treasury will be required to publish the mandatory exemption list at

least annually in the *Federal Register*. This proposal is consistent with IRS' own analysis that 40 percent of the CTR database is filled with routine information. We would strongly recommend however, that the "category of businesses" contemplated by section 2 be as broad as the current exemptions allowed by Treasury.

We would also recommend that the "notice of exemption" required by section (d)(2) contain the entity's legal name, taxpayer ID number(s) and any other identifying information necessary for positive identification. The exact date or month for publication of the "Notice" should be specified in the Act so affected institutions could anticipate this recurring annual event. Changes to the list of entities identified in the "Notice" should not be mandatory until 90 days after publication in the *Federal Register*. Optional compliance should be allowed beginning on the date of publication.

The second part is a discretionary exemption list that includes transactions between a depository institution and its qualified business customers who most frequently engage in transactions which are subject to reporting requirements under the BSA. The qualified business customer must meet criteria determined by the Treasury to be sufficient to ensure that the purposes of the BSA are carried out without requiring a report with respect to such transactions. A discretionary exemption is effective only after the depository institution submits a list of its customers to the Treasury and the Secretary approves the application of the exemption to such customer. Finally, depository institutions must annually review its list of customers and resubmit the list for the Secretary's approval. We hope that the agency will review the list in a prompt and timely manner. It is recommended that the section be changed to ensure swift review. The Treasury Department, like many Federal agencies, has been hampered by limited resources. There must be adequate staff to handle this new authority. With the addition of certainty to the process as well as the safe harbor for banks, Congress can rekindle our industry's interest in bank initiated exemptions. However, efficiency is the key.

Most importantly, under the bill, depository institutions that have been granted either a mandatory or discretionary exemption will receive a safe harbor from the penalty for failure to file a CTR. This provision is crucial to gaining banker support for the bill and we commend its inclusion.

STREAMLINED CTR'S (SECTION 2)

"Streamlining CTR's" should not turn out to be more expensive than leaving things alone. All changes are expensive—even the ones that reduce requirements. Staff still has to be trained, software must be changed, forms must be reprinted and old ones destroyed, audit procedures will have to be revised and bank examiners will have to be retrained. Therefore, we support the concept of redesign, but banks must be consulted during this process if changes are to have any real effect. This is an excellent issue for the Bank Secrecy Act Advisory Group.

SUSPICIOUS TRANSACTIONS (SECTION 3)

Mr. Chairman, we have long criticized the multiple filing process for reporting suspicious transactions to the Government. With technology being what it is, it stands to reason that banks should only have to file with one agency. Section 3 of your bill will go a long way toward guaranteeing that result if it covers all current suspicious transaction reports. This section requires the Secretary of Treasury to designate a single agency of the United States to receive all suspicious transaction reports required under 31 U.S.C. 53.18 and to coordinate the distribution of those reports with the appropriate law enforcement or supervisory agency. However, section 3(a)(4)(C) seems to take away the benefit of this new system by allowing the agencies, under certain circumstances, to still require multiple reports. This section should be amended if the proposed change is to have any meaning.

The Secretary of the Treasury will then submit a report to the House Banking Committee no later that 1 year after the date of enactment of this Act, on the number of suspicious transactions reported to the Treasury and the results of such reports. This is a major improvement to the system. One major caveat: the industry is still strongly opposed to a "new" reporting scheme on suspicious transactions unless substantial changes are made to the current reporting scheme. It must be noted that we already have the criminal referral form process and those forms are now the vehicle for reporting possible money laundering and Bank Secrecy Act criminal violations. Those forms, unfortunately, are required to be filed with at least six (6) different agencies. We would be happy to work with both the Government and Congress on this issue.

NEGOTIABLE INSTRUMENTS DRAWN ON FOREIGN BANKS SUBJECT TO RECORDKEEPING AND REPORTING REQUIREMENTS (SECTION 5)

This section would change the definition of "monetary instruments" in 31 U.S.C. §5312(3) to include, "as the Secretary of the Treasury shall provide by regulation, checks, drafts, notes, money orders, and other similar instruments which are drawn on a foreign financial institution and are not in bearer form." Among other things, this change in the definition of "monetary instruments" would subject non-bearer instruments drawn on a foreign financial institution to the reporting requirements for exporting and importing monetary instruments found in 31 U.S.C. §5316 and 31 CFR §103.23 which currently cover individuals who transport monies in or out of the United States (commonly known as the CMIR requirements).

While it is desirable to have such reporting requirements apply to persons entering or exiting the United States with foreign financial institution instruments in their possession, this section also would apply to such instruments while in the interbank collection and reconciliation process. This could impose a major compliance burden for banks that handle large volumes of checks and other instruments for international collection, since there is no systematic way to cull instruments drawn on or by foreign financial institutions from instruments that are not. Under these circumstances, a bank would have no practical way of knowing whether it was handling instruments subject to the reporting requirements. It also appears that law enforcement is really after the individuals who transport illegal monies and are not interested in the large volume of new records that banks would have to retrieve.

In fact, because of these difficulties, banks generally are excused from filing reports on instruments in the interbank collection and reconciliation process. The current definition of "monetary instruments" includes bearer negotiable instruments and travelers' checks. Instruments in the interbank collection and reconciliation process are restrictively endorsed and therefore are not in bearer form. Travelers checks in the collection and reconciliation process are specifically exempted from reporting by 31 CFR §103.23(c)(8). Since this section refers to instruments that are not in bearer form, it should exclude such instruments that are in the collection and reconciliation process.

Mr. Chairman, we would suggest that S. 1664 be amended along the lines of the House Banking Committee money laundering companion bill (H.R. 3235) that passed the Full Committee on March 9, 1994. The House bill was amended to, "require persons bringing negotiable instruments drawn on or by foreign banks in excess of $10,000 into the United States to file a report, instead of requiring banks to report such instruments as part of the currency reporting requirements." We understand that the Treasury Department supports this approach and we would be pleased to work with this Committee to develop language to accomplish this result.

ANNUNZIO-WYLIE ANTI-MONEY LAUNDERING ACT OF 1992

Mr. Chairman, as we address your new bill, we would like to take this opportunity to also comment on the potential effect on our industry of P.L. 102–550, the Annunzio-Wylie Anti-Money Laundering Act of 1992. As indicated upon introduction, the intent of this law is to give the appropriate Federal depository institution regulatory agencies the power to revoke charters, terminate deposit insurance, and remove or suspend officers and directors of depository institutions involved in money laundering or currency transaction offenses.

The banking industry generally supported the main provisions of the new law, which was a product of the hard work of this Committee. The provisions relating to charter revocation were carefully crafted to give the regulators the necessary flexibility to consider several important factors prior to closing the institution. However, there were several provisions that can substantially hinder banking activity if the regulations are not carefully drawn.

IDENTIFICATIONS OF NON-BANK FINANCIAL INSTITUTIONS

This section will require depository institutions to provide the name and other information about non-bank financial institution customers to the Treasury Department. Since there is an extremely broad definition of a "financial institution" and the ongoing transformation of many types of retail businesses into limited providers of financial services, this requirement will rapidly overload Treasury with millions of new reports. While we understand the intent behind this section, it is not focused sharply on the problem and it is distressing that once again the banking industry is being asked to provide information to law enforcement which could be and should be derived from other sources.

It is troubling that because of the inability of the Government to get a handle on certain entities that are not providing sufficient information, Congress is requiring depository institutions to provide the information. With the creation of FinCEN,

there must be information available outside of our industry to create a database to determine which non-bank financial institutions are evading reporting requirements. We continue to recommend that the corporate tax form (Form 1120) be amended to include a box for the entity to disclose its business form directly to the Government. However, the focus of S. 1664 on money transmitters may be a useful tool toward solving our concern. We recommend expanding the definition of financial institutions under section 8, so that registration of money transmitters could also be used to identify the financial institutions that were required under the Annunzio-Wylie law.

FUNDS TRANSFER REQUIREMENTS

The banking industry has commented on the October 1993, regulatory proposal by the Treasury and the Federal Reserve Board concerning wire transfers record-keeping. Since the promulgation of the first proposal in 1989, the industry has feared an inappropriate response to the question of how funds transfers fit into the BSA compliance responsibilities of an institution. The industry was generally pleased with the joint rulemaking and our comment letter is attached for your information. Both the Treasury and the Federal Reserve Board deserve credit for promulgating a reasonable rule. However, Mr. Chairman, there is still some concern about several provisions in the proposal and we are hopeful that those issues can be addressed when the Advisory Group meets.

SUSPICIOUS TRANSACTION REPORTING

We are pleased that the Treasury will once again consider this issue when the BSA Advisory Board meets. Annunzio-Wylie gave the Treasury the authority to "require" banks and non-banks to report suspicious transactions. While the requirement for non-banks makes sense, any attempt by Treasury to create "another" reporting form for banks can be a major problem. However, as previously stated, we believe that the issue can be resolved by a thorough discussion in the Advisory Group.

ABA had recommended that with the creation of FinCEN, and the acknowledgement that the agency will coordinate CRF filings for all agencies, all financial institutions be allowed to submit CRF's directly to FinCEN. This will eliminate tremendous duplication and costs to the banks. As previously stated, it is incomprehensible that six agencies need separate copies of the CRF.

Finally, the use of guidelines on suspicious transactions similar to the publication issued by the OCC and the creation of the *Trends* newsletter, are welcome additions to a bank's compliance program.

ADDRESSING THE RATZLAF DECISION

In January, the Supreme Court ruled that the laws regarding "structuring" of cash transactions to avoid reporting could not be violated simply by avoidance of the over $10,000 reporting requirement. In a 5–4 decision, the Court said that to convict an individual for violating 31 U.S.C. 5322(a) of the Bank Secrecy Act, the Government must prove that "the defendant acted with the knowledge that the structuring he or she undertook was unlawful, not simply that the defendant's purpose was to circumvent a bank's reporting obligation."

The facts of the case involved an individual who was paying gambling debts to a casino with $100,000 in cash. When informed that the casino would have a reporting obligation because of the cash, the individual traveled to several banks to purchase cashiers checks under $10,000. The defendant also knew of the bank's reporting requirements.

The Court, in *Ratzlaf* v. *United States* (92–1196), held that even though the bank had a duty to report cash transactions over $10,000 and that it was a crime under 31 U.S.C. 5324 for a willful violation of the structuring prohibition, the individual could not be guilty of violating that bank's reporting requirements because he did not intend to disobey the law. The Court went on to point out that "currency structuring is not inevitably nefarious" so a conviction must include something more than mere avoidance of the bank's reporting obligations.

Mr. Chairman, while this is not a bank decision, per se, we are concerned about the possible ramifications for our industry. Financial institutions are still required to report possible violations of law, including structuring, to law enforcement and the regulatory agencies. Therefore, if a banker suspects that a transaction is being conducted to avoid reporting, a report must be sent to the appropriate agencies. It should not be up to a bank employee to determine an individual's intent. While reports to the Government, based on the banker's belief that a law had been violated, are protected from customer liability claims under the Annunzio-Wylie Money Laundering Act of 1992, this court decision has caused some confusion. However, a

change in the law, as approved by the House Banking Committee, can clear up this problem.

We urge the Committee to add to S. 1664 a provision to clarify that to prove a criminal violation of the prohibition on structuring transactions to evade currency reporting, the Government needs only prove the intent to evade the reporting requirements, rather than prove that the defendant knew that evasion was illegal.

OTHER ISSUES

We believe that there is a need for consistency in supervision and regulation of the financial industry. This can only occur if the Government and the banking industry understand their respective roles. One way to do this is by educating the industry on the latest tactics and techniques utilized by money launderers. We do realize that this problem is more a result of resources and an increased workload than any intentional disregard for supplying financial institutions with immediate information. However, it would be helpful if various banking and law enforcement agencies could immediately advise the banking community as to the latest money laundering trends, suspicious types of customers, and current illegal transactions so that the industry could put into effect the necessary safeguards to preclude such activities.

The BSA Bulletin Board announced by IRS, is an excellent vehicle to supply centralized information on interpretations to banks. After 22 years of compliance with the Bank Secrecy Act, one of the major problems for bankers is the lack of guidance on interpreting the Act. The industry is unanimous in its call for an annual agency review or update of the BSA regulations such as exists with the Federal Reserve Board's "Official Staff Commentary" on Regulation Z and Regulation B.[2] The current Treasury system of releasing Administrative Rulings in the *Federal Register* is an incomplete means of communication because it does not reach all members of the banking industry. Access to the *Federal Register* is not as wide-spread as many may believe. The Treasury Department has issued a myriad of "private rulings" over the years that have only been made available to the industry in forums or private sector publications. There is a critical need for a "staff commentary" that could include all previously issued rulings and interpretations of the Bank Secrecy Act.

The commentary system used by the Federal Reserve Board has had a dramatic effect on compliance because of the certainty that exists with a single published source that is updated annually. As mentioned above, the industry is dependent upon the Government for information on the Bank Secrecy Act and money laundering deterrence in general and the lack of adequate information and feedback makes it difficult, if not impossible, to protect against liability and the use of financial institutions as vehicles for money laundering. ABA does appreciate the efforts made by the Office of the Comptroller of the Currency (OCC), the Internal Revenue Service (IRS), and the Treasury Department in participating at industry-sponsored conferences and programs on money laundering. We would like to especially acknowledge the work of the Federal Reserve Board in assisting our educational programs. However, education is not always a priority for all agencies but it must become one if we are all to be partners in deterrence.[3]

The goals of the Bank Secrecy Act are only reached if banks have sufficient guidance from the Government on general compliance and how to stop schemes of BSA avoidance.

ABA RECOMMENDATIONS

The American Bankers Association has been in the forefront of BSA compliance efforts (i.e., products, conferences, seminars) as well as the only group to actively participate in all debates on money laundering in Congress and with the regulators. Therefore, our recommendations to improving the BSA system are based on years of analysis and a good-faith desire toward resolving the inconsistency between regulations and effectiveness. Some of these proposals have been offered before, all have been actively debated, and most have received wide-spread support.

The first major proposal was a long-standing recommendation concerning the creation of a panel of experts or advisors from the Government and the private sector to determine how to get the most out of the Bank Secrecy Act. ABA was pleased to see Congress pass this proposal in 1992 to amend the BSA and create a perma-

[2] Truth in Lending Act; (15 U.S.C. 1601 et. seq.) Regulation Z Staff Commentary (TIL–1. Supp. 1–12 CFR Part 226), Equal Credit Opportunity Act (P.L. 94–239), Regulation B.

[3] The American Bankers Association has devoted considerable resources and time to Bank Secrecy Act education over the years. Through conferences, schools, seminars, and publications, ABA has trained an estimated 100,000 bankers in the past 8 years. Our commitment to BSA awareness has received commendations from the Customs Service, the Drug Enforcement Agency (DEA), and the Office of National Drug Control Policy.

nent advisory group similar to the Federal Reserve Board's Consumer Advisory Council.[4] We are anxiously awaiting the first meeting of this group which we understand will be on April 8, 1994.

ABA also recommends amending section 103.22 of the BSA to reduce the number of routine CTR's that are not "highly useful." If the exemption change in section 2 of S. 1664, is not successful in lowering routine reports, then we again recommend raising the threshold for CTR filings. The over $10,000 amount for "cash in or cash out" of an institution during one business day has been in effect since the inception of the BSA. The figure is no longer a fair example of "highly useful" transaction information in the 1990's and serious consideration should be given to adjusting the amount. ABA understands that modification may adversely affect the current BSA education process and that CTR filers that are already on-line may have to make some adjustments, but the decrease in total filings will have a beneficial effect on cost and effectiveness to law enforcement. This is a perfect issue for an advisory group.

ABA recommends that the CTR level be raised to $25,000 for corporations, but remain at $10,000 for transactions by individuals. Economists have adjusted our $10,000 level to account for inflation and other appropriate factors and have found that the CTR amount would be closer to $36,000 in 1992 dollars. Therefore, we feel that the $25,000 threshold is workable and will continue to provide useful information to law enforcement. We believe that our argument has been bolstered by a November 1993 GAO report which concluded that 58 percent of the CTR's filed in 1992 were in amounts of $20,000 or less. In addition, 20.3 percent of the filings, were between $20,000 and $35,000.

We have also recommended simplifying the CTR form. Section 2 of your bill addresses this overdue concern. The CTR is two pages long and an additional two pages of instructions. We urge that the private sector group assist the Government in developing a new form. Many discussions with IRS officials over the years have convinced our members of the need to redesign the form. To assure full public participation, we recommend that all reporting forms be made a part of the BSA regulation and that changes be proposed for public comment.

The banking industry was also affected by the passage of the $3,000 rule in the 1988 Omnibus Drug Bill and the subsequent promulgation of the regulation (103.29). Information on the utility of this requirement is sketchy at best, but the industry strongly believes that modifications can be made to this rule to ease the regulatory burden on the bank while providing sufficient information to law enforcement. For example, Signet Banking Corporation, in Richmond, VA, has 240 offices and in the 32 months since the regulations has been in effect, none of Signet's branches have received a request for records.

ABA recommends changing the $3,000 rule to only require a "purchaser's log" for non-customers. All of the *required* information on customers would be established when the accounts are opened and be held for the BSA record retention period (5 years). At a minimum, the Act should be amended to eliminate the $3,000 log requirement if the bank was required to file a CTR on currency transactions now covered by both rules. Currently, the two requirements are simultaneously triggered whenever a bank has knowledge that (1) an individual conducts two or more cash-in transactions during any one day totaling more than $10,000, and (2) one or more of those cash-in transactions involved the purchase of one or more negotiable instruments that total between $3,000 and $10,000.

As ABA argued in 1989 when the log requirement was first proposed, it is clear from the legislative history that both Congress and the Treasury intended that more expansive information under section 5325 would be required of financial institution non-account holders but that limited information was necessary for account holders.[5] Our association would suggest that financial institutions be permitted to substitute the proposed log with an individual institution's own recordkeeping system for account holders for the purchase of cashier's checks, travelers checks, money orders, and bank checks *provided* that the information retained is in keeping with the information needed by Treasury. This suggestion would encourage banks to continue to sell those monetary instruments to account holders rather than opting to discontinue those sales.

This alternative would not affect the requirement as to non-account holders. Due to the recognition of common money laundering techniques, many institutions al-

[4] 12 CFR 267.

[5] Deputy Assistant Secretary [Law Enforcement] Gerald L. Hilsher told the House Banking Committee on June 8, 1989, that the "intent of proposed section 5325 is to receive identification from money launderers who are not account holders at the financial institutions where they purchase monetary instruments with cash."

ready have a policy of not selling the above-mentioned instruments to non-account holders. While our association does not recommend this policy, it is one that can easily be understood. The Treasury could offer the option of keeping a chronological log only for non-account holders. Many institutions have indicated that the use of chronological logs are labor-intensive so an option for those institutions would be desirable.

Mr. Chairman, deterrence works if risks are raised sufficiently. We believe that the risks involved in attempting to launder money through financial institutions are great and the reporting of suspicious activity is constantly on the rise. Congress can close out the possibility of laundering in financial institutions by improving the CTR reporting system. We ask this Committee to consider our comments as constructive criticism to a system that can work if all affected parties work as a team.

We thank you for the opportunity to present our views.

AMERICAN BANKERS ASSOCIATION

October 4, 1993

MR. PETER DJINIS, DIRECTOR, OFFICE OF FINANCIAL ENFORCEMENT
OFFICE OF THE ASSISTANT SECRETARY (ENFORCEMENT)
U.S. DEPARTMENT OF THE TREASURY

MR. WILLIAM W. WILES, SECRETARY
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Re: *Federal Reserve System, [Docket No. R–0807], 31 CFR 103, Department of the Treasury, Proposed Amendments to the Bank Secrecy Act Regulations*

Dear Mr. Djinis and Mr. Wiles:

The American Bankers Association ("ABA") is pleased to have this opportunity to comment on several proposed amendments to the Bank Secrecy Act that will require financial institutions to retain certain records relating to funds transfers. The ABA is the national trade and professional association for America's commercial banks, from the smallest to the largest. ABA members represent about 90 percent of the industry's total assets. Approximately 94 percent of our members are community banks with assets of less than $500 million.

These proposed regulations are the culmination of 4 years of debate on how the funds transfer system should be modified to assist law enforcement agencies in their effort to deter money laundering. The ABA was unalterably opposed to the first proposed change to funds transfers in part because of its reliance on creating a new reporting system that would have dramatically hindered the payment system. However, the Treasury and the Federal Reserve Board have worked intensively on these new proposals and are to be commended for drafting a fair and equitable regulation. While the ABA does have some remaining concerns, the responsiveness of the agencies to banking industry comment is greatly appreciated.

Since the first proposed regulation was issued in 1989, the banking industry worked hard to familiarize the Treasury Department (as well as other agencies) on the complexities of the wire transfer system. As we approached the possibility of new regulations, Government employees were asked to tour wire facilities, discuss the payment system with operations officials and seek additional information on this new area of potential reporting.

The concern over these potentially burdensome requirements led the industry to seek Congressional support for a "joint" rulemaking process that would enable the Federal Reserve Board, together with the Treasury Department, to:

> Jointly prescribe, after consultation with State banking supervisors, final regulations requiring that insured depository institutions, businesses that provide check cashing services, money transmitting businesses, and businesses that issue or redeem money orders, travelers' checks, or other similar instruments maintain such records of payment orders which—
>
> "(i) involve international transactions; and
>
> "(ii) direct transfers of funds over wholesale funds transfer systems or on the books of any insured depository institution, or on the books of any business that provides check cashing services, any money transmitting business, and any business that issues or redeems money orders, travelers' checks, or similar instru-

ments, that will have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings."

In addition, the Annunzio-Wylie Anti-Money Laundering Act (section 1515 of P.L. 102–550) states that:

> Whenever the Secretary and the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the "Board") determine that the maintenance of records by insured depository institutions, of payment orders which direct transfers of funds over wholesale funds transfer systems has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, the Secretary and the Board shall jointly prescribe regulations to carry out the purposes of this section with respect to the maintenance of such records.

What must be emphasized is Congressional concern about the scope of these new requirements. The factors that the joint rulemaking agencies must consider when implementing this mandate is instructive:

> In prescribing the regulations required under subparagraph (A), the Secretary and the Board shall consider—
>
> "(i) the usefulness in criminal, tax, or regulatory investigations or proceedings of any record required to be maintained pursuant to the proposed regulations; and
>
> "(ii) the effect the recordkeeping required pursuant to such proposed regulations will have on the cost and efficiency of the payment system."

Thus, these new regulations must be assessed in terms of their effect on law enforcement *and* the banking industry.

Effective Date

While the ABA is pleased that many of the burdensome aspects of the earlier proposals have been modified or dropped, we do remain concerned about the very short time period for financial institutions to get their systems adjusted to comply with these new regulations.

The ABA strongly suggests that Congress recognized the effect that a change to the payments system would have on financial institutions. Therefore, while the regulations for international transfers must be effective before January 1, 1994, we believe that the implementation period for these new regulations and those for domestic transfers must be much more flexible. ABA respectfully suggests that all new requirements be in place by January 1, 1995, or after the Fedwire Funds Transfer Format has been adapted to facilitate automation of compliance. This 12 month period is consistent with the 12 month period for implementation of the requirement relating to transmittal of funds. In addition, ABA recommends that the banking agencies not penalize financial institutions for non-compliance with these regulations until that time.

The ABA recommends that the Federal Reserve Board and the Treasury Department consider the extremely short time frame in which the financial institution industry must put into effect new recordkeeping requirements for domestic and international funds transfers when examining for compliance with section 1515 of Annunzio-Wylie. We strongly urge the agencies to allow for a reasonable period of transition for institutions that must now retain new records for funds transfers and transmittals of funds.

Since the notice of proposed rulemaking was published on August 31, 1993, in the *Federal Register* with a comment period to end on October 4, 1993, it is critical that financial institutions be given the flexibility to implement the new regulations over a longer period of time. Congress made clear its concern that the regulatory effect on the payment system be measured when finalizing these regulations when it passes section 1515. Therefore, we must have time to implement beyond the statutory "effective" date of "before January 1, 1994."

Retrievability

Several of our members expressed concern about retrievability of the records required to be retained under this regulation. While the proposal emphasizes that the records be "accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time that has expired since the record was made," members are still concerned that this requirement could be burdensome. We recommend that flexibility be considered when seeking a record, especially when the request only includes a name without an account number.

The second related concern is whether or not there is liability to an institution that provides records to the Government on a "name only" request because that will result in the gathering of records on many individuals that are not the target of the investigation. An agency statement on this issue would be extremely helpful.

Practical Difficulties in Achieving Full Compliance

Many of our members have pointed out that the information which banks will be required to maintain and be able to access is not currently stored in such a manner as to make it "readily retrievable." Therefore, we recommend that the agencies clarify the concept of "retrievability." The normal practice followed in the transmission of a wire is: (1) customer completes a wire transfer transmittal request; (2) request is reviewed by wire transfer operators; (3) wire is transmitted; (4) wire is recorded on a chronological log; (5) debit from customer's account is posted; (6) wire transfer transmittal requests are stored physically or in microfiche. If institutional mergers have occurred the problem again multiplies, and if transactions are accepted for non-account holders the records would be even less accessible.

At this time, many members tell us that nowhere in this process is a database generated which would allow electronic searches of wire records by name or account number. Apparently, the only way to recover wire information when an individual's name (Joe Jones) is given is: (1) recover the account numbers of all parties with that name; (2) obtain copies of all account statements during the period concerned; (3) individually review all transactions on the statements to isolate wire transactions if they are noted as such; (4) finally, review the microfiche records of all wires in the chronological log and make copies of matches. If partial names are given such as J. Jones, the difficulty is obviously multiplied many fold.

Community banks may transmit and receive several hundred wires a day. A typical regional bank may transmit and receive as many as 3,000–4,000 wires a day. This will result in a total of 3.75 to 5.0 million wires per year, and increase the cost of record retention and retrievability. Money center banks send many times even this number of wires.

Banks will record and store the required information. However, we emphasize the manual nature, labor intensiveness, and expense of the searches that would have to be done. Given the business demands on depository institutions, compliance with requests for any substantial number of searches will be a major expense for many of our members. We hope that the agencies will recognize these concerns when examining for full compliance.

Exemptions

Another topic frequently mentioned by our members is exemptions under this new system. One member indicated support for financial institutions, at their option, to exempt certain transactions from any recordkeeping requirements to limit the burden imposed on them. The proposed exemptions could be similar to these available for CTR's. The institution suggested the following exemptions be incorporated into the regulation: (1) all funds transfers in amounts of $10,000 or less; (2) all funds transfers by businesses which are specifically excepted from CTR reporting; (3) all funds transfers by businesses which a bank can exempt unilaterally from CTR reporting in accordance with the standards provided in the Exemption Handbook published by the Treasury Department—such exemptions would apply to funds transfers of exempted businesses which occur in the ordinary course of business on a regular basis; and (4) all funds transfers by any corporation listed on any major stock exchange, or by any public utility or Government agency. They also suggested, however, that the Government be able to target any specific customer or account for recordkeeping and reporting regardless of whether it qualifies for an exemption as discussed.

Definitions

Several members have asked for clarity in the definitions. Those concerns include:

a. The definition of "accept" includes the undefined term "executing." We request that the new regulations define "execute" to conform to the definition found in section 4A–301(a) of article 4A of the Uniform Commercial Code.

b. The definition of "payment order" seems to exclude drawndown requests from the definition. Several members are seeking confirmation of the exclusion of drawndown requests under the new rules.

c. The definition of "transmittal of funds" excludes "funds transfers" governed by the EFTA. Assuming that a transmittal of funds other than a "funds transfer" may be subject to the EFTA, one institution recommended that the reference to "funds transfer" found in the definition of "transmittal of funds" be replaced with "transmittal of funds."

Conclusion

As we commented in 1990, ABA remains concerned that an international wire transfer policy may have the side effects of slowing the global payments system, hindering legitimate world, trade, and penalizing the international competitiveness of

U.S. financial institutions. At a minimum, we feared that the U.S. financial services industry could be constrained in its ability to process international payments in an efficient and timely fashion. Furthermore, any material deterioration in the level of efficiency currently existing in the global payments system could accelerate the trend toward greater reliance on offshore dollar netting—to the detriment of U.S. regulatory initiatives to monitor U.S. dollar payments.

Therefore, the ABA recommended that any amendment of regulations under the BSA addressing international wire transfers be measured against the industry's ability to comply with minimal service disruption and costs while addressing the need to stop the flow of illegal monies. Many of our members believe that this has been largely done within the confines of the statutory mandate. We commend the Federal Reserve Board and Department of Treasury for working cooperatively with the industry to address this potentially major problem.

Sincerely,

Philip S. Corwin

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THE BANK SECRECY ACT: DO REPORTING REQUIREMENTS REALLY ASSIST THE GOVERNMENT?

*John J. Byrne**

I. INTRODUCTION

On October 26, 1970, the Bank Records and Foreign Transactions Act was signed into law.[1] This law, commonly referred to as the Bank Secrecy Act (BSA),[2] was not initially designed to combat the laundering of drug money.[3] Rather, it was enacted "to require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings"[4]

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1. Bank Records and Foreign Transactions (Bank Secrecy) Act, Pub. L. No. 91-508, 84 Stat. 1114 (1970) (codified as amended in scattered sections of U.S.C.).

2. *See* 12 C.F.R. § 326 n.1 (1992).

3. One former public official has defined "money laundering" as "the process by which one conceals the existence, illegal source, or illegal application of income, and then disguises that income to make it appear legitimate." James D. Harmon, Jr., *United States Money Laundering Laws: International Implications*, 9 N.Y.L. SCH. J. INT'L & COMP. L. 8-9 (1988) (Mr. Harmon formerly served as Executive Director and Chief Counsel of the President's Commission on Organized Crime). Another commentator has described money laundering in the following way:

> This process . . . is comprised of three principal steps: placement, layering and integration. Placement, the initial phase of the laundering process, is the act of "removing [the criminal proceeds] from the location of its acquisition to avoid attention" or, more simply, hiding the funds from enforcement officials. . . .
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> Next, layering occurs, which involves "separation of illicit proceeds from their source by creating complex layers of financial transactions designed to disguise their audit trail." The nexus between placement and layering is clear, as any placement procedure which involves the alteration of the physical location or nature of the "hot money" is also a form of layering. . . .
>
> Finally, the criminal must integrate funds, with apparent legitimacy, into the regular economy. This may be done through false recording of loans, invoices[,] and income of shell corporations, or more simply through an electronic transfer of the funds from a bank secrecy haven back to the money's country of origin.

Christopher J. Kent, *The Canadian and International War Against Money Laundering: Legal Perspectives*, 25 CRIM. L.Q. 21, 21-22 (1992) (alteration in original) (footnotes omitted).

4. 31 U.S.C. § 5311 (1988 & Supp. III 1991).

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and to assist the government with tracking monies that are being hidden in tax evasion schemes.[5] The BSA is a recordkeeping and reporting statute whose most frequently cited requirement mandates that financial institutions report all currency transactions involving more than $10,000 to the Internal Revenue Service (IRS).[6]

This Article argues that the regulations promulgated under this law, as well as the changes in the law itself, have often been inconsistent with its initial goals. The various changes to the BSA have resulted in a patchwork of regulations and laws that have saddled financial institutions with many responsibilities. However, these requirements have never been subject to any thorough analysis of whether they have (or will) fulfill the intended purpose of the BSA.

Some of these regulatory changes have also had a negative effect on the U.S. economy due to the international community's failure to adopt similar recordkeeping and reporting provisions. In fact, several countries have reviewed requirements such as currency transaction reporting and have rejected them as unwieldy, costly, and unnecessary.[7] When the Solicitor General of Canada issued a user report entitled *Tracing of Illicit Funds: Money Laundering in Canada*,[8] it concluded that the U.S. reporting system "generates too much paper," "results in too long of a delay in providing the information to law enforcement," "provides too little evidence that it is valuable," and "is a costly and highly intrusive system."[9] However, the Canadian government did propose record-

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5. *See* H.R. REP. No. 975, 91st Cong., 2d Sess. 10 (1970) ("Petty criminals, members of the underworld, those engaging in 'white collar' crime and income tax evaders use, in one way or another, financial institutions in carrying on their affairs."), *reprinted in* 1970 U.S.C.C.A.N. 4394, 4395 . In fact, the purpose of the original proposal that resulted in the BSA was "to require the maintenance of appropriate types of records by insured banks where such records may have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." *Id.* at 16 (quoting H.R. 15,073, 91st Cong., 2d Sess. § 21(a)(2) (1970)), *reprinted in* 1970 U.S.C.C.A.N. 4394, 4401.

6. 31 C.F.R. § 103.22 (1992). The regulations implementing the BSA did not become effective until July 1, 1972. 37 Fed. Reg. 6915 (1972). There have been many changes to the BSA over the years, but the $10,000 threshold has remained the same. *See* 31 C.F.R. § 103.22 (1992).

7. *See infra* note 12 and accompanying text.

8. SOLICITOR GENERAL OF CANADA, USER REPORT NO. 1990-05, TRACING OF ILLICIT FUNDS: MONEY LAUNDERING IN CANADA (1990) [hereinafter USER REPORT].

9. *Id.* at 98; *see id.* 86-90. It is interesting to note that the same report considered a further study of the CTR system, but warned that "such a study might produce no more

keeping requirements for large cash transactions (more than $10,000 per year) after it gained the authority to require those records under the Proceeds of Crime (Money Laundering) Act in 1991.[10] Significantly, these regulations require recordkeeping rather than reporting.[11]

Many other countries (e.g., Australia, the United Kingdom, and Japan) have rejected some portion of the U.S. system.[12] The funds expended by the U.S. banking industry on currency reporting have had a negative impact on our economy, considering that no money is spent on such systems in other countries. Therefore, any review of the currency transaction reporting program must take into consideration the effect the system has had on the U.S. economy.

In 1975, the American banking industry filed 3418 currency transaction reports (CTRs).[13] In 1992, our industry filed an estimated 9.2 million CTRs![14] There is great concern that the volume of CTRs makes it impossible for the government to effectively use them to initiate investigations. In fact, according to IRS estimates, it takes forty-five days to place a CTR in the federal database in

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than is already known." *Id.* at 100. The report went on to point out that the "views of those working with the [CTR] system in the United States vary depending upon whether they are speaking officially or informally and depending on which 'user' organization they are from." *Id.*

10. Proceeds of Crime (Money Laundering) Act, ch. 26, §§ 2, 4-5, 1991 S.C. 417, 418 (Can.).

11. §§ 4-5.

12. For example, the Australian system of money laundering deterrence includes currency transaction reporting, but it is an "on-line" system which is more effective and efficient than the U.S. paper-based system. USER REPORT, *supra* note 8, at 96-98. The English system also differs from that of the United States, in that "there is no legal obligation on behalf of financial institutions to report all cash transactions above a certain limit to the authorities." Konstantin D. Magliveras, *The Regulation of Money Laundering in the United Kingdom*, 1991 J. BUS. L. 525, 535; *see* Margaret M. Ross, Note, *Bankers, Guns, and Money: Financial Assistance for Terrorism Under the Prevention of Terrorism Act, 1989*, 14 B.C. INT'L & COMP. L. REV. 77, 109 (1991) ("Instead of supplying authorities with transaction reports useful in criminal investigations, bankers in the United Kingdom must disclose information to authorities in a manner that will not prejudice or obstruct such investigations."); *cf.* W.P. Boucaut, *Hong Kong's Legislative Initiative to Combat Drug Related Money Laundering*, 18 COMMONWEALTH L. BULL. 320 (1992) (discussing Hong Kong's scheme for money laundering prevention, which is modeled after that of England).

13. *History of Currency Transactions Reports*, ABA BANKERS WEEKLY (Am. Bankers Ass'n, Wash., D.C.), Oct. 31, 1989, at B2. Currency transaction reports are required under 31 C.F.R. §§ 103.21-.29 (1992).

14. This figure was given to the author by the Treasury Department's ("Treasury") Office of Financial Enforcement.

Detroit, Michigan.[15] No matter how committed we are as an industry to stemming the tide of money laundering, it is clear that there must be some policy adjustment or an increase in resource allocation; otherwise, we will continue to inundate the government with information without assurance that it can be used effectively.[16]

II. Money Laundering Legislation in the 1980s

Cash reports continued to be filed in the early 1980s, but the quantities were not significant.[17] It was not until several major institutions were fined for failing to report cash transactions that a dramatic upsurge occurred in filings.[18] It is interesting to note that the United States General Accounting Office took the government

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15. U.S. Gen. Accounting Office, Rep. No. NSIAD-91-130, Money Laundering: The U.S. Government Is Responding to the Problem 20 (1991) (report to the Subcomm. on Terrorism, Narcotics and International Operations of the Senate Comm. on Foreign Relations) [hereinafter GAO Money Laundering Report]; *see* User Report, *supra* note 8, at 87.

16. Treasury has promulgated a regulation on the electronic filing of CTRs which may add necessary efficiency to the filing process. 55 Fed. Reg. 36,663 (1990) (to be codified at 31 C.F.R. §§ 103.22, .27) (proposed Sept. 6, 1990).

17. For example, only some 513,000 CTRs were filed in 1983, compared with 5.8 million filed in 1988. *History of Currency Transaction Reports*, *supra* note 13, at B2.

18. In a statement to the House Banking, Finance and Urban Affairs Committee in 1985, a GAO official suggested that the increase in filings occurred after the sentencing of the First National Bank of Boston for BSA violations. *Banking Secrecy Act: Hearing Before the Permanent Subcomm. on Investigations of the Senate Comm. on Governmental Affairs*, 99th Cong., 1st Sess. 5, 15 (1985) [hereinafter *1985 Senate Subcomm. Hearing*] (statement of William J. Anderson, Director, Gen. Gov't Div., U.S. Gen. Accounting Office); *see Briefing on the 1970 Currency and Foreign Transactions Reporting Act: Hearing Before the Subcomm. on Financial Institutions Supervision, Regulation and Insurance of the House Comm. on Banking, Finance and Urban Affairs*, 99th Cong., 1st Sess. 14-16 (1985) (statement of Hon. John M. Walker, Jr., Assistant Secretary for Enforcement & Operations, U.S. Dep't of the Treasury) [hereinafter *1985 House Subcomm. Briefing*]. In a 1987 hearing, Francis A. Keating, II, Assistant Secretary for Enforcement, U.S. Department of the Treasury, submitted the following remarks:

> A watershed event in the history of Bank Secrecy Act enforcement was the *Bank of Boston* case . . . . In February 1985, the Bank of Boston pled [sic] guilty and was fined $500,000 for violations of the Bank Secrecy Act stemming from its failure to report over 1100 transactions, totalling over $1.6 billion, with its foreign correspondents in Switzerland and elsewhere. At that time, it also became public that the bank had allowed the exemption from CTR reporting of a business owned by a noted crime family.
>
> In the aftermath of *Bank of Boston*, it became apparent . . . that there had been widespread inattention to Bank Secrecy Act compliance by the financial community at large and inadequate attention by the supervision agencies charged with examination for Bank Secrecy Act compliance. As a result, countless financial institutions reassessed their compliance program[s] and audited their compliance histor[ies].

to task for not enforcing the BSA prior to the major fines of 1985.[19] However, the 1985 fines took the banking industry by storm. All the major newspapers and the electronic media jumped on the bandwagon and began to engage in "bank-bashing."[20] The most

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What followed was the dramatic surge in the filing of CTRs and a parade of banks coming forward to Treasury with information about their past noncompliance.

Money Laundering Control Act of 1986 and the Regulations Implementing the Bank Secrecy Act: Hearings Before the Subcomm. on Financial Institutions Supervision, Regulation and Insurance of the House Comm. on Banking, Finance and Urban Affairs, 100th Cong., 1st Sess. 61, 75-76 (1987) [hereinafter *Money Laundering Control Act of 1986 Hearings (House Banking)*] (statement of Francis A. Keating, II, Assistant Secretary for Enforcement & Operations, U.S. Dep't of the Treasury).

The following table shows the increase in CTR filings from 1984 to 1991:

YEAR	*FILINGS*
1984	716,000
1985	1,859,000
1986	3,572,000
1987	4,952,000
1988	5,765,000
1989	6,504,000
1990	7,336,000
1991	7,454,000

Statistical Indicators: Bank Secrecy Act/8300 Filings, FINCEN TRENDS (Fin. Crimes Enforcement Network, Arlington, Va.), Apr. 1992, at 12 [hereinafter *Statistical Indicators*].

19. In a 1985 Senate Judiciary Committee hearing, Senator Joseph Biden, Jr., quoted the GAO as saying that Treasury

> [g]ave relatively low priority to Bank Secrecy Act compliance when applying examination resources, being concerned primarily with other mission-related objectives; lacked detailed procedures, or applied existing procedures inconsistently; failed to adequately document the work performed, so that often neither we nor they could ascertain how well examiners were performing the compliance examinations, and failed to designate examiners with a wide range of experience and training to assure compliance with the Act, and could better communicate and coordinate with one another and thereby enhance the overall compliance.

Money Laundering Legislation: Hearing on S. 572, S. 1335, and S. 1385 Before the Senate Comm. on the Judiciary, 99th Cong., 1st Sess. 90 (1985) [hereinafter *Senate Money Laundering Legislation Hearing*] (statement of Sen. Joseph Biden, Jr.); *see 1985 Senate Subcomm. Hearing, supra* note 18, at 17-18 (statement of William J. Anderson, Director, Gen. Gov't Div., U.S. Gen. Accounting Office).

20. *See, e.g.*, Fox Butterfield, *Boston Bank Describes Lapses in Cash Deals*, N.Y. TIMES, Feb. 22, 1985, at A1 (reporting on Bank of Boston's involvement in the money laundering schemes of a New York organized crime family); Nathaniel C. Nash, *4 Banks Fined: 140 Others Studied*, N.Y. TIMES, June 19, 1985, at D1 (noting $1.2 million in fines levied against several banks for BSA reporting violations and IRS investigation of 140 others); Nathaniel C. Nash, *41 Banks Studied on Cash Rules*, N.Y. TIMES, Mar. 6, 1985, at D1 (quoting John M. Walker, Jr., Assistant Secretary for Enforcement & Operations, U.S. Dep't of the Treasury, saying that 41 United States banks are under investigation for failing to comply with BSA's reporting requirements); James Sterngold, *Banks Review Secrecy*

important repercussion, however, was that Congress decided to legislate.

In 1986 Congress enacted the Money Laundering Control Act.[21] Ironically, prior to the enactment of this legislation it was not a crime to disguise the ownership source of drug funds derived from illegal activity. While the banking industry—through the American Bankers Association (ABA)—supported the passage of this statute,[22] the industry bore the brunt of excessive rhetoric the like of which is rarely seen even on Capitol Hill. James Harmon, the Executive Director and Chief Counsel of the President's Commission on Organized Crime, stated that "[p]art of the solution to this country's organized-crime problem may be found in the boardrooms of the financial institutions which service this city and the world . . . . All too often, banks condone money laundering because their balance sheets make no distinction between legal and illegal money."[23]

It was this type of attack that pushed the industry to emphasize an aggressive stance toward the problem. The ABA provided a witness every time Congress held a hearing on money laundering.[24]

Compliance, N.Y. TIMES, Feb. 22, 1985, at D5 (discussing big banks' review of BSA compliance procedures following First Nat'l Bank of Boston scandal).

21. Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, §§ 1351-1367, 100 Stat. 3207, 3207-18 to 3207-39 (codified as amended in scattered sections of U.S.C.).

22. Boris F. Melnikoff, Group Vice President and Corporate Director of Special Services at First Atlanta Corporation, told the House Judiciary Committee on June 13, 1985:

> The ABA supports making the laundering of money a crime, provided specific criminal elements such as intent and scienter are included in the definition. . . . The crime of money laundering must be drafted with precision so as to exact the most effective, fair result. The thrust of any newly defined crime of "money laundering" should be on the individual who initiates or causes to be initiated a transaction involving a financial institution, with the intent to promote unlawful activity or with knowledge or reason to know that the transaction represents income directly or indirectly derived from unlawful activity. This definition would affect customers and employees of financial institutions alike.

Current Problem of Money Laundering: Hearings Before the Subcomm. on Crime of the House Comm. on the Judiciary, 99th Cong., 1st Sess. 156, 157-58 (1985) (statement of Boris F. Melnikoff on behalf of the ABA).

23. Selwyn Raab, *Ex-Crime Figure Is Expected to Testify on Laundering of Billions in Banks*, N.Y. TIMES, Mar. 13, 1984, at B1 (quoting James Harmon, Jr.).

24. *See, e.g., Tax Evasion, Drug Trafficking and Money Laundering as They Involve Financial Institutions: Hearings on H.R. 1367, H.R. 1474, H.R. 1945, H.R. 2785, H.R. 3892, H.R. 4280, and H.R. 4573 Before the Subcomm. On Financial Institutions Supervision, Regulation and Insurance of the House Comm. on Banking, Finance and Urban Affairs*, 99th Cong., 2d Sess. 973-77, 1089-99 (1986) [hereinafter *1986 Tax Evasion Hearings (House Banking)*] (statements of Earl B. Hadlow, representing the ABA); *The Drug Money Seizure*

officials. In fact, the *United States Attorneys' Manual* instructs that, in certain circumstances, cases filed under this statute must be approved by the Justice Department.[29]

The final offense created by the MLCA was the crime of structuring transactions and evading (or assisting others in evading) reporting.[30] Section 5324 of 31 U.S.C. imposes stiff criminal fines for actions such as depositing $8000 on three successive days, if the government can prove willfulness or negligence.[31] Congress felt compelled to craft this legislation because the federal courts could not resolve whether the reporting requirements applied to individuals as well as to financial institutions.[32] In addition, the avoidance of reporting by breaking down transactions into sums of less than

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29. The manual states that utilization of the extraterritorial provision or prosecution of an attorney for proceeds which represent attorney's fees, requires the written approval of the assistant attorney general in charge of the criminal division. U.S. DEP'T OF JUSTICE, UNITED STATES ATTORNEYS' MANUAL § 9-105.100 (1990) [hereinafter ATTORNEYS' MANUAL].

30. 31 U.S.C. § 5324 (1988).

31. *Id.*; *see* United States v. Dashney, 937 F.2d 532, 537-40 (10th Cir. 1991) (holding that the statute requires willfulness), *cert. denied*, 112 S. Ct. 402 (1991).

32. *1986 Drug Money Seizure Act Hearing (Sen. Banking)*, *supra* note 24, at 22, 30 (statement of Francis A. Keating, II, Assistant Secretary for Enforcement, U.S. Dep't of the Treasury, indicating that the proposed anti-smurfing law was meant to cure inadequacies in the application of the current law in three of the federal circuits); *id.* at 44, 49 (statement of Richard C. Wassenaar, Assistant Comm'r, Criminal Investigation, Internal Revenue Serv., that the "proposed legislation corrects [certain] problems" revealed by the case law); *id.* at 65, 67 (statement of James Knapp, Deputy Assistant Attorney Gen., Criminal Div., that the proposed anti-smurfing statute "should close [the] money laundering 'loophole'" and "should help clarify the state of the law and permit continued vigorous prosecution"); *id.* at 91, 92 (statement of Robert H. Hodges, on behalf of the ABA, that the anti-smurfing statute was designed to cure shortcomings in the BSA); *id.* at 128, 134-36 (response to written questions of Sen. Alfonse M. D'Amato from James Knapp & Brian Sun, commenting that case law has created two major gaps in the reporting law that the anti-smurfing legislation should overcome); *id.* at 221, 226 (written comments of Eugene T. Rossides, banking representative, illustrating that the anti-smurfing law was "designed to overcome several recent court decisions").

The House of Representatives has also dealt with the smurfing problem. *See 1986 Tax Evasion Hearings (House Banking)*, *supra* note 24, at 787, 792 (statement of Stephen S. Trott, Assistant Attorney Gen., Criminal Div., that the anti-smurfing statute was aimed at overcoming problems of structured transactions caused by recent cases); *id.* at 824, 846 (statement of Stephen S. Trott, describing recent case law as a "severe blow" to government efforts to use reporting requirements). Statements in these hearings referred to a number of court decisions. *See, e.g.*, United States v. Dela Espriella, 781 F.2d 1432 (9th Cir. 1986); United States v. Varbel, 780 F.2d 758 (9th Cir. 1986); United States v. Anzalone, 766 F.2d 676 (1st Cir. 1985); United States v. Cogswell, 637 F. Supp. 295 (N.D. Cal. 1985).

The ABA also began a series of educational efforts designed to assist its members in developing effective compliance programs.[25] This trade group became the leading source of information on money laundering prevention in the country.

The Money Laundering Control Act of 1986 (MLCA),[26] enacted with widespread industry support, created several new laws. First, 18 U.S.C. § 1956 established penalties of fines and imprisonment for virtually all transactions involving the profits of a wide range of "specified unlawful activit[ies]" when those transactions are aimed at furthering such activity or concealing the source of ownership of the funds or when the transaction in question constitutes a violation of the BSA under Title 31.[27] The second provision, 18 U.S.C. § 1957, made it illegal to engage in transactions involving criminally derived property.[28] This statute has been the cause of some confusion among both government and industry

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Act and the Bank Secrecy Act Amendments: Hearing on S. 571 and S. 2306 Before the Senate Comm. on Banking, Housing, and Urban Affairs, 99th Cong., 2d Sess. 90-94, 195-96 (1986) [hereinafter *1986 Drug Money Seizure Act Hearing (Sen. Banking)*] (statement of Robert H. Hodges, Jr., representing the ABA); *Senate Money Laundering Legislation Hearing, supra* note 19, at 157-84 (statement of Earl B. Hadlow, representing the ABA).

25. For example, from 1989 to 1992, the ABA presented numerous seminars in conjunction with the American Bar Association's Criminal Justice Section. *See, e.g.*, AMERICAN BANKERS ASS'N & AM. BAR ASS'N CRIMINAL JUSTICE SECTION, 1992 MONEY LAUNDERING ENFORCEMENT SEMINAR (1992) (brochure announcing seminar held on Oct. 29, 1992 in Wash., D.C.); AMERICAN BANKERS ASS'N & AM. BAR ASS'N CRIMINAL JUSTICE SECTION, 1991 MONEY LAUNDERING ENFORCEMENT SEMINAR (1991) (brochure announcing seminars held on Sept. 26-27, 1991, in Miami, Fla. and on Oct. 17-18, 1991, in Los Angeles, Cal.); AMERICAN BANKERS ASS'N & AM. BAR ASS'N CRIMINAL JUSTICE SECTION, MONEY LAUNDERING ENFORCEMENT DEVELOPMENTS AND POLICY IMPLICATIONS (1990) (brochure announcing seminar held on Sept. 24-25, 1990, in Wash., D.C.); AMERICAN BANKERS ASS'N & AM. BAR ASS'N CRIMINAL JUSTICE SECTION, MONEY LAUNDERING ENFORCEMENT: LEGAL AND PRACTICAL DEVELOPMENTS (1989) (brochure announcing a seminar for financial institution executives and counsel, held on Oct. 26-27, 1989, in New York, N.Y.). It should further be noted that Treasury "has participated in numerous educational programs for financial institutions." *Money Laundering Control Act of 1986 Hearings (House Banking), supra* note 18, at 10, 13 (statement of Francis A. Keating, II, Assistant Secretary for Enforcement & Operations, U.S. Dep't of the Treasury).

26. Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, §§ 1351-1367, 100 Stat. 3207, 3207-18 to 3207-39 (codified as amended in scattered sections of U.S.C.).

27. 18 U.S.C. § 1956(a)(1) (1988).

28. 18 U.S.C. § 1957(a) (1988). This section is limited to criminally derived funds over $10,000 and does not require that these funds be used for any additional criminal purpose—the only requirement is that the receiver know that they are from an unlawful activity. *Id.* The purchase of any personal chattel or real estate, knowing that the proceeds of such purchase were from a criminal activity, could constitute a violation under this statute. *Id.*

officials. In fact, the *United States Attorneys' Manual* instructs that, in certain circumstances, cases filed under this statute must be approved by the Justice Department.[29]

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$10,000, commonly known as "smurfing," had become the most common method of money laundering.[33]

Congress has given us an example of what constitutes structuring:

> [A] person who converts $18,000 in currency to cashier's checks by purchasing two $9,000 cashier's checks at two different banks or on two different days with the specific intent that the participating bank or banks not be required to file . . . [CTRs] for those transactions, would be subject to potential civil and criminal liability. A person conducting the same transactions for any other reasons or a person splitting up an amount of currency that would not be reportable if the full amount were involved in a single transaction (for example, splitting $2,000 in currency into four transactions of $500 each), would not be subject to liability under the proposed amendment.[34]

III. The $3000 Recordkeeping Requirement

Once financial institutions fully understood the law regarding structuring, bankers began aggressively reporting transactions that may have been inadvertently divided into amounts less than the reporting requirement. Despite considerable evidence that structuring was being reported, Congress decided to require financial institutions to keep additional records on certain cash transactions under $10,000.[35] Section 5325 was added to Title 31 to provide new identification and recordkeeping requirements for financial institu-

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33. *1986 Drug Money Seizure Act Hearing (Sen. Banking)*, *supra* note 24, at 24, 30 (1986) (statement of Francis A. Keating, II, Assistant Secretary for Enforcement, U.S. Dep't of the Treasury). Secretary Keating defined "smurfing" as

> the structuring of small cash transactions within a financial institution [so as] to avoid the $10,000 threshold reporting requirement of the Bank Secrecy Act and to avoid the interest of law enforcement as a result of [that] series of smaller transactions, which all taken together add up to substantial transactions with a view toward avoiding the strictures of the [Bank Secrecy] [A]ct.

Id. at 18, 22.

34. S. Rep. No. 433, 99th Cong., 2d Sess. 22 (1986). For an excellent analysis of this law, see Sarah N. Welling, *Smurfs, Money Laundering, and the Federal Criminal Law: The Crime of Structuring Transactions*, 41 Fla. L. Rev. 287 (1989).

35. *See* 31 U.S.C. § 5325 (1988) (requiring financial institutions to follow specified identification and verification procedures for purchases of certain monetary instruments "in amounts or denominations of $3,000 or more").

tions that sell certain monetary instruments in amounts of $3000 or more.[36]

The law provides that no financial institution can issue or sell a bank check, cashier's check, traveler's check, or money order to any individual in an amount in excess of $3000 unless:

> (1) the individual has a transaction account with such financial institution and the financial institution—
>
> (A) verifies that fact through a signature card or other information maintained by such institution in connection with the account of such individual; and
>
> (B) records the method of verification in accordance with regulations which the Secretary of the Treasury shall prescribe; or
>
> (2) the individual furnishes the financial institution with such forms of identification as the Secretary of the Treasury may require in regulations which the Secretary shall prescribe and the financial institution verifies and records such information in accordance with [those] regulations . . . .[37]

The regulations implementing this Act were completed in 1990 and made effective on August 13, 1990.[38]

IV. Targeting of Financial Institutions

The 1988 addition to the BSA of 31 U.S.C. § 5326[39] was troubling to bankers. The House Banking Committee proposed that Treasury be given the authority to isolate or "target" certain geographic regions or specific financial institutions and to require

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36. *Id.* The original proposal, contained in H.R. 5176, passed the House in 1986, but was rejected by the Senate. *See* H.R. 5176, 99th Cong., 2d Sess. (1986), *microformed on* Sup. Docs. No. Y 1.4:99-5176 (U.S. Gov't Printing Office). In 1988, even though there was now a law prohibiting transactions under $10,000 designed to avoid reporting, the House fought for the $3000 law. *See id.* The $3000 figure was chosen because structured transactions were frequently divided into $3000 increments. Cloyd E. Cook, Bank Secrecy 56 (1991) ("In passing the $3,000 rule, Congress clearly articulated a concern that these types of negotiable instruments are commonly used by money launderers in elaborate schemes to wash their illegal proceeds."). There has been no empirical evidence to date regarding its value as a deterrent.

37. 31 U.S.C. § 5325(a)(1)-(2) (1988).

38. *See* 31 C.F.R. § 103.29 (1992); 55 Fed. Reg. 20,139 (1990) (stating that the effective date is Aug. 13, 1990); *id.* at 20,143 (text of the proposed rule).

39. 31 U.S.C. § 5326 (1988).

those institutions to report cash transactions involving less than the current $10,000 threshold.[40]

The response from the industry was immediate. The facts showed that the financial industry had been, for several years, reporting transactions under $10,000 that were deemed "suspicious."[41] These types of structured transactions were being reported on a regular basis to Treasury and other bank regulators because the banks had reason to believe that a violation of the law had occurred. Bankers felt there was absolutely no evidence that geographic targeting was necessary.[42] In fact, members of the Criminal Investigative Division of the IRS had denounced the requirement as causing unnecessary paperwork, which would send the wrong message to the financial industry.[43]

Opposition within the industry and government agencies did not deter the House Banking Committee from passing this provision, and it became part of the final version of the 1988 drug bill.[44]

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40. *See Money Laundering Control Act of 1986 Hearings (House Banking)*, *supra* note 18, at 7 (statement of Hon. Esteban E. Torres).

41. John J. Byrne, Federal Legislative Counsel, Am. Bankers Ass'n, Prepared Remarks for a Roundtable Discussion on the Use of Bank and Other Financial Records in Criminal Investigations 9 (Sept. 22, 1988) [hereinafter Prepared Remarks] (on file with the *Alabama Law Review*); *see Money Laundering Control Act of 1986 Hearings (House Banking)*, *supra* note 18, at 29 (statement of Francis A. Keating, II, that Treasury "want[s] the financial community to become good citizens and call law enforcement when they see suspicious transactions"). Assistant Secretary Keating went on to note the "dramatic surge" in CTR filings after the fining of the Bank of Boston in 1985. *Id.* at 76.

42. *E.g.*, Prepared Remarks, *supra* note 41, at 8-10.

43. *Money Laundering Control Act of 1986 Hearings (House Banking)*, *supra* note 18, at 83-84 (statement of Francis A. Keating, II).

44. 31 U.S.C. § 5326 (1988). In fact, Assistant Secretary Keating told Representative Esteban Torres on May 6, 1987, that Treasury had withdrawn a $3000 regulatory proposal. Keating stated:

> Originally, I must confess, I was a supporter of the $3,000 rule. I felt there would be no difficulty with its adoption. But when this matter was recently presented to our enforcement community and when the comments were reviewed from the financial community, the credit union, savings and loan, and banking industry [sic], we learned two things. First, as you have indicated, that the cost burden was enormous, because these were very common transactions. Second, from the Internal Revenue Service, we learned that because of the tremendous volume of records that they would have to absorb and because the rule originally contemplated these materials only be stored in the bank, they felt that they would have a difficult time even examining it, much less making a case based solely on an analysis of these records.
>
> They examined their enforcement histories and concluded that this was a very small part of the smurfing problem at this time. They felt that securing this information, would not materially assist them in their enforcement mission. And when I

Under the new law, the Secretary of the Treasury may order a specific financial institution or group of financial institutions in a particular geographic area to obtain information and to maintain records concerning transactions in which the bank is engaged and about any person participating in the transactions.[46]

Treasury has issued regulations on the scope of its targeting authority,[48] but there is no requirement that the use of targeting orders be published. In yet another legislative initiative on money laundering in 1992,[47] there is a provision clarifying the prohibition against disclosure of a targeting order.[48]

V. General Recommendations

After twenty-two years of compliance with the BSA, one of the major problems for bankers remains a lack of guidance on interpreting the Act. The banking industry has called for an annual agency review or update of BSA regulations, similar to the annual review that currently takes place with regard to the Federal Reserve Board's commentary on Regulation Z[49] and Regulation B.[50] Currently, Treasury infrequently releases administrative rulings in the Federal Register, but this is not an effective means of communication because many members of the banking industry, particularly community banks, do not receive this costly publication. Treasury has issued a myriad of "private rulings" over the years that have been made available to the industry only in forums

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suggested all this material should be stored in Detroit and analyzed on a current basis, they said as far as they were concerned, this would not be useful.

I felt that was a tremendous burden to place on the financial community if the enforcement community really wasn't interested in it as an analytical tool. We needed to go back to the drawing board, flush out these seemingly contradictory positions in this debate—there were a number of contradictory positions in this debate—and come up with a rule which made sense and was useful.

Money Laundering Control Act of 1986 Hearings (House Banking), supra note 18, at 24-25.

45. 31 U.S.C. § 5326(a) (1988); *see* 31 C.F.R. § 103.26 (1992) (implementing regulation for 31 U.S.C. § 5326).

46. *See* 31 C.F.R. § 103.26(d) (1992).

47. *See* Annunzio-Wylie Anti-Money Laundering Act, Pub. L. No. 102-550, §§ 1500-1565, 106 Stat. 3672, 4044 (1992) (to be codified in scattered sections of U.S.C.).

48. *Id.* § 1514, 106 Stat. at 4058 (to be codified at 31 U.S.C. § 5326(c)).

49. Regulation Z is codified in 12 C.F.R. pt. 226 (1992). Its statutory origin is the Truth in Lending Act, 15 U.S.C. §§ 1601-1667e (1988 & Supp. III 1991).

50. Regulation B is found in 12 C.F.R. pt. 202 (1992). Its statutory origin is the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f (1988 & Supp. III 1991).

or private sector publications.[51] Communication efforts must be stepped up, or compliance will suffer. There is a critical need for a "staff commentary" that includes all previously issued rulings and interpretations of the BSA.

The commentary system in the regulations mentioned above has had a positive effect on compliance because of the certainty that an annual update provides. The industry is dependent upon the government for information on the BSA and money laundering deterrence in general. The lack of adequate information and feedback makes it difficult, if not impossible, to protect against liability and the use of financial institutions as vehicles for money laundering. The Office of the Comptroller of the Currency, the IRS, the Federal Reserve Board, and Treasury have participated in industry-sponsored conferences and programs on money laundering that do assist with compliance.[52] However, education is not seen as a priority for all agencies, and this must change if the regulations are to be effective.[53]

The goals of the BSA will be reached only if banks have sufficient guidance from the government on how to comply with the law and how to stop BSA avoidance schemes. The Financial Crimes Enforcement Network ("FinCEN"), Treasury's newly created data center,[54] publishes *Trends*, an excellent newsletter that has a limited distribution due to the lack of resources.[55] FinCEN is

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51. Sections 103.70 to 103.77 of the Code of Federal Regulations give Treasury formal authority to issue rulings to individuals upon request or upon its own initiative. 31 C.F.R. §§ 103.70-.77 (1992).

52. *See supra* note 25.

53. Trade associations, such as the ABA, have devoted considerable resources and time to BSA education over the years. Through conferences, schools, seminars, and publications, the Association has trained an estimated 75,000 to 100,000 bankers in the past eight years. *See supra* note 25. This commitment to BSA awareness has earned us commendations from the Customs Service, the Drug Enforcement Agency, and the Office of National Drug Control Policy. We are pleased to note that Treasury has created an electronic BSA Bulletin Board to assist bankers with new interpretations of the Act. This is a step in the right direction.

54. *See* U.S. GEN. ACCOUNTING OFFICE, REP. NO. GGD-91-53, MONEY LAUNDERING: TREASURY'S FINANCIAL CRIMES ENFORCEMENT NETWORK (1991) [hereinafter GAO FINCEN REP.] (report to the Subcomm. on Treasury, Postal Service & General Government of the Senate Comm. on Appropriations).

55. In fact, the ABA provides copies of this publication free of charge to member institutions, upon request. However, the government needs to develop a more efficient means of complete distribution.

attempting to expand its limited distribution, but Treasury must develop alternative methods to disseminate BSA information.

One example of how feedback could be offered can be seen in the United Kingdom. The British National Drugs Intelligence Unit, together with the British Bankers Association and other interested trade groups, issues *Money Laundering Guidance Notes for Banks and Building Societies* ("*Guidance Notes*") to help financial institutions put an end to money laundering.[56] These *Guidance Notes* assist bankers in understanding suspicious transactions and in getting feedback on the use of information by law enforcement. The December 1990 issue states:

> There is a common obligation in all the statutory and regulatory requirements not to facilitate money laundering, and while there is nothing that requires financial institutions to detect money laundering activities, there is a need for awareness and vigilance and a system for reporting suspicious transactions to the law enforcement authorities. For the purpose of these Guidance Notes, therefore, systems are defined as policies, procedures[,] and controls to facilitate recognition and reporting of suspicious transactions to the law enforcement agencies.
>
> The supervisory authorities have indicated that financial institutions must develop a level of awareness and vigilance to guard against money laundering and that they would expect to see in place the following procedures:
>
> [1.] for developing and communicating group policies relating to money laundering;
>
> [2.] for account opening; customer identification; requirements and records of identification documents;
>
> [3.] for maintaining records of transactions;
>
> [4.] to ensure compliance with relevant legislation;
>
> [5.] to facilitate co-operation with the relevant law enforcement authorities, including the timely disclosure of information;
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> [6.] to audit/inspect compliance with policies, procedures[,] and controls relating to money laundering;
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> [7.] to provide training and guidance to staff in the operation of procedures and controls relating to money laundering and their obligations under the law;

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56. *See* NATIONAL DRUGS INTELLIGENCE UNIT ET AL., MONEY LAUNDERING GUIDANCE NOTES FOR BANKS AND BUILDING SOCIETIES 1 (1990) [hereinafter GUIDANCE NOTES].

[8.] for the monitoring of compliance by subsidiaries and overseas branches with group policies and controls relating to money laundering.[57]

Finally, the U.S. government has begun the important step of targeting nonbank business entities whose level of cash reporting compliance is low or nonexistent.[58] Since the banking industry has become more astute in their compliance policies, there is an indication that money laundering is actually more prevalent in other industries.[59] The government's efforts in this regard deserve com-

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57. *Id.* at 7.

58. In a 1991 report, the Senate Banking Committee offered the following discussion in support of proposed money laundering legislation:

> In the past, drug money laundering deterrence legislation has focused on depository institutions. However, as deterrence and compliance programs . . . have improved, money launderers with illicit profits have found new avenues of entry into the financial system. Peter Nunez, the Assistant Secretary of the Treasury for Enforcement, testified before the Committee in May 1990 that "[i]t is undisputed that as Bank Secrecy Act compliance by banks has improved, drug money launderers have and will continue to turn to [nonbank financial institutions] to convert street currency into monetary instruments and even to transmit abroad the proceeds of drug sales." Increasingly, money launderers are using . . . nonbank financial companies for initial placement and the number of such businesses is growing rapidly in some states.
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> . . . .
>
> The [proposed] legislation [that is the subject of this report] significantly increases the Federal role in working with the states to deter money laundering.

S. REP. No. 167, 102d Cong., 1st Sess. 183-84 (1991); *see* PERMANENT SUBCOMM. ON INVESTIGATIONS, SENATE COMM. ON GOVERNMENTAL AFFAIRS, 102D CONG., 2D SESS., REPORT ON CURRENT TRENDS IN MONEY LAUNDERING (1992) (Senate Print 102-123) [hereinafter CURRENT TRENDS REP. (SENATE SUBCOMM.)] (reporting on the shift of money laundering activities from banks to nonbank financial institutions).

59. A December 1992 report noted the "overwhelming evidence showing that nonbank financial institutions are deeply involved in money laundering, primarily as a result of their being subject to substantially less regulation and oversight than their regular bank counterparts." CURRENT TRENDS REP. (SENATE SUBCOMM.), *supra* note 58, at 22; *see* S. REP. No. 167, 102d Cong., 1st Sess. 183-84 (1991). Moreover, compliance with the similar reporting requirement of § 6050I of the Internal Revenue Code is generally considered to be lower than compliance with the BSA. *See* I.R.C. § 6050I(a) (1988) (requiring the filing of I.R.S. Form No. 8300 for currency transactions of more than $10,000); *see also Business Community's Compliance with Federal Money Laundering Statutes: Hearing Before the Subcomm. on Oversight of the House Comm. on Ways and Means*, 101st Cong., 2d Sess. 126, 127 (1990) [hereinafter *1990 Compliance Hearing (House Subcomm.)*] (statement of Michael J. Murphy, Senior Deputy Comm'r, IRS, regarding the "problem in compliance with the section 6050I reporting requirements" and comparing this problem to the current compliance level of CTR filings); *cf. Effectiveness of the U.S. Department of the Treasury Programs to Address Money Laundering and Related Federal Tax Evasion: Hearings Before the Subcomm. on Oversight of the House Comm. on Ways and Means*, 102d Cong., 2d Sess. 2, 4 (1992) (statement of Hon. J.J. Pickle, Chairman, observing that "while [today]

mendation, but many advocate a swifter attack on those entities.[60] This concern has resulted in the passage of certain provisions in the Annunzio-Wylie Act that attack money laundering through nonbank institutions, including a requirement that such entities report suspicious transactions.[61]

VI. Costs and Benefits of the Bank Secrecy Act

In April 1992, the Bush Administration sought evaluation of existing BSA regulations to determine if the "expected benefits to society . . . clearly outweigh the expected costs it imposes on society."[62] While this proposal was welcomed by bankers, it should be emphasized that Treasury has never had to publicly detail its position that proposed BSA regulations are not major rules for purposes of Executive Order 12,291.[63] Whether addressing the BSA or any other regulation, the requirement that a distinction be

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the number of [F]orm [8300s] filed has increased, close to 40 percent of these forms are of no use to IRS because of missing or incorrect information").

60. As the ABA told Congress on February 27, 1992:

> The commercial banking industry remains concerned about the lack of adequate oversight over those entities that act like financial institutions. Since our nation's bankers are valued participants in governmental efforts to slow money laundering, we are frustrated at the lack of assistance from other parts of the private sector. Trade [sic] or businesses not subject to the Bank Secrecy Act (Form 8300 filers), the casas de cambios, currency exchange operations[,] and check cashing operations must be reigned [sic] in.

Current Trends in Money Laundering: Hearing Before the Permanent Subcomm. on Investigations of the Senate Comm. on Governmental Affairs, 102d Cong., 2d Sess. 294, 296 (1992) [hereinafter *1992 Current Trends Hearing (Senate Subcomm.)*] (statement of the ABA).

61. *See* Annunzio-Wylie Anti-Money Laundering Act, Pub. L. No. 102-550, § 1517, 106 Stat. 3672, 4059 (1992) (to be codified at 31 U.S.C. §§ 5314, 5324).

62. 57 Fed. Reg. 10,307 (1992) (requesting comments to assist the Treasury Department "in identifying . . . [BSA] regulations which impose a substantial cost on the economy").

63. Exec. Order No. 12,291, 3 C.F.R. § 127 (1982), *reprinted in* 5 U.S.C. § 601 (1988), *and in* 1981 U.S.C.C.A.N. B4. Under the regulations implementing Executive Order No. 12,291, a "major rule" is a regulation projected to produce

> (1) An annual effect on the economy of $100 million or more;
>
> (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
>
> (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

44 C.F.R. § 1.2(e) (1992).

made between a "major" and "minor" rule has never been adequately developed by the government. There is an overall need to review how an agency reaches a conclusion regarding the economic effect of a proposed regulation if the Executive Order is to have any meaning.

Treasury is in the process of finalizing a regulation on record-keeping for funds transfers by banks. This rule, pending since 1989, will create new industry obligations under the BSA.[64] Estimates on the annual cost of compliance with this rule run as high as $200 million.[65] This is another situation where Treasury should have considered the possibility that the regulation could be "major" and subject to extensive analysis prior to promulgation.[66] Treasury has received more than 350 detailed comments on this proposal, and to its credit the agency has toured various wire transfer operations.[67] However, the process of soliciting comments from affected parties needs to be improved. The wire transfer regulatory process is a prime example where a government-industry group could have been extremely beneficial in explaining the various problems of a complex regulatory proposal prior to promulgation. Fortunately, the Annunzio-Wylie Act now requires that Treasury "jointly" promulgate its wire transfer regulations with the Federal Reserve Board.[68] This will also ensure that any new requirements are implemented only after consideration of the new rule's effect "on the cost and efficiency of the payment system."[69]

In 1990, the ABA released a survey on the BSA.[70] The results, which were based in large part (seventy-six percent) on small com-

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64. Note that there is a newer proposal promulgated in 1990. 55 Fed. Reg. 41,696 (1990) (to be codified at 31 C.F.R. pt. 103) (proposed Oct. 15, 1990).

65. *See* Letter from Philip J. Bergan, Assoc. Gen. Counsel, Citicorp, to Peter G. Djinis, Acting Director, Office of Fin. Enforcement, U.S. Dep't of Treasury 6 (Jan. 15, 1991) [hereinafter Bergan Letter] (on file with the *Alabama Law Review*). *But see* 55 Fed. Reg. 41,702 (1990) (containing a Treasury estimate that "the proposal will [not] have an annual effect on the economy of $100 million or more").

66. *See* Bergan Letter, *supra* note 65, at 6.

67. Jay Rosenstein, *Treasury to Float Reporting Rules*, AM. BANKER, Oct. 19, 1989, at 2.

68. Annunzio-Wylie Anti-Money Laundering Act, Pub. L. No. 102-550, § 1515, 106 Stat. 3672, 4056 (1992) (to be codified at 12 U.S.C. § 1829b).

69. § 1515(a)(2), 106 Stat. at 4059 (to be codified at 12 U.S.C. § 1829b(b)(3)(B)(ii)).

70. AM. BANKERS ASS'N MONEY LAUNDERING DETERRENCE AND BANK SECRECY ACT RESEARCH REPORT (1990) [hereinafter 1990 SURVEY].

munity banks,[71] give an indication of BSA compliance costs. In 1990, banks estimated their cost of compliance under the BSA to be $129 million.[72] According to the survey, this figure, although large, does not represent the true cost of such compliance.[73] Many bankers were unsure how to correctly estimate their costs, and others excluded fixed costs and other categories of costs that should have been included. The survey illustrates the general level of frustration in the industry surrounding BSA implementation.

VII. Costs of Filing a CTR

Many of the compliance costs are associated with currency transaction reporting. The time for completing a CTR ranges from twenty to thirty minutes.[74] Within those parameters, financial institutions believe that it costs anywhere from $3 to $15 (exclusive of overall BSA compliance costs) to file a CTR.[75] The cost depends on whether the filing is manual or by magnetic media.[76]

In 1991, more than 7.4 million CTRs were filed with the IRS by the banking industry.[77] At $3 per CTR, the annual cost is more than $22 million. If we accept a higher individual cost of $15, total industry cost rises proportionately. Any review or change to the CTR filing system must address the cost to the industry as well as the benefit to law enforcement agencies. To date, this has not been done.

Other examples of compliance costs abound. Puget Sound Bank, a $5 billion institution, estimates BSA related costs of over $220,000 per year for CTRs, software, auditing, and branch admin-

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71. *Id.* at 3.

72. *Id.* at 5.

73. In fact, the ABA released another survey in 1992 on general regulatory burden and concluded that banks spend over $10 billion annually on compliance costs. Am. Bankers Ass'n. Survey of Regulatory Burden: Summary of Results A-1 (1992) [hereinafter 1992 Survey].

74. John J. Byrne, *Laundering Law Missing the Target*, Am. Banker, July 23, 1992, at 4.

75. *Id.* There are some estimates as high as $17.00 to $17.50 per CTR. *See, e.g.*, Lenny Glynn, *Can Bankers Help Win the Drug War?*, Institutional Investor, Feb. 1990, at 77, 79 (estimating CTR costs at $17 each); Alan J. Weber, *Payment System Risks; Shrinking Margins on Payment Services Point to Need for Assessing and Allocating the Real Costs of Doing Business*, Bank Mgmt., Mar. 1991, at 16, 20 (estimating CTR costs at $17.50 each).

76. Byrne, *supra* note 74, at 4.

77. *Statistical Indicators*, *supra* note 18, at 12.

istration.[78] The Laredo (Texas) National Bank, another small institution, estimates that it spends more than $200,000 per year on CTR filings (completed electronically) plus annual maintenance and programming fees.[79] The cost of CTR systems are, without question, high and rising with the increasing number of filings. The question must then be asked whether the filing of CTRs deters money laundering and benefits law enforcement.

VIII. CTR Effectiveness

Approximately 9.2 million CTRs were filed in 1992.[80] How do you prove the utility of these filings to law enforcement? Both Treasury[81] and the GAO[82] have filed reports with Congress covering this topic. Their conclusions, however, are less than convincing.[83]

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78. This information, as well as the information accompanying footnote 79, has been provided to the author by various means, including conversations with other bankers at ABA events and seminars. Another example is First of America Bank Corp., which spent approximately $700,000 on compliance in 1991. *Bankers Tell Treasury of BSA Headaches*, Money Laundering Alert, May 1992, *available in* LEXIS, Banking Library, MLA File. First of America is a $16.8 billion asset bank holding company. *Id.*

79. *See supra* note 78. A similar example of compliance costs for smaller banks is the case of Alta Vista State Bank in Alta Vista, Kansas. In this small rural town, the Bank spends "several thousand dollars" per year to train its employees in compliance procedures, even though it has not had a qualifying currency transaction in more than 20 years. *Bankers Tell Treasury of BSA Headaches*, *supra* note 78.

80. *See supra* note 14 and accompanying text.

81. *1990 Compliance Hearing (House Subcomm.)*, *supra* note 59, at 85 (statement of Hon. Peter K. Nunez, Assistant Secretary for Enforcement, U.S. Dep't of the Treasury).

82. U.S. Gen. Accounting Office, Rep. No. GGD-91-125, Money Laundering: The Use of Cash Transaction Reports by Federal Law Enforcement Agencies (1991) (report to Congressional committees); *see 1990 Compliance Hearing (House Subcomm.)*, *supra* note 59, at 9 (statement of Barney Gomez, Special Agent assigned to the Subcomm. on Oversight of the House Comm. on Ways and Means, from the Office of Special Investigations, U.S. Gen. Accounting Office).

83. In a 1991 report, the GAO cited an IRS internal audit report and concluded as follows:

> [M]ost [CTR] documents [are] processed in a timely manner, with data posted and transcribed accurately. However, the [1990 IRS] report identified some major problems, mainly due to a lack of staff. These [problems] included . . . inadequate internal controls to ensure timely and complete processing and error correction[,] and . . . failure to completely account for BSA documents and data sent to contractors and user organizations.
>
> . . . The audit report said these deficiencies had been or were being corrected.

GAO Money Laundering Report, *supra* note 15, at 20-21.

The ABA has learned from an IRS agent in the Greater Northwest region that, in the past five years, only one criminal prosecution has been initiated by the filing of a CTR. Similar examples suggest that the CTR is useful as a "paper trail," but *not* as a point of beginning for investigations.[84]

With the costs, increased filings, and the rejection by foreign countries of our reporting system, the movement to modify the current system cannot be delayed. With impending new regulations on mandatory aggregation and electronic filing of CTRs,[85] as well as several new rules implemented by the 1992 amendments,[86] the cost of BSA compliance will continue to rise.

Government officials need to continue allocating extensive resources to monitor and review CTRs. However, IRS agents tell the banking community that the agency is refocusing on tax crime cases to the detriment of BSA investigations. In addition, a Senate Foreign Affairs subcommittee report pointed out that IRS Criminal Investigation Division agents desperately need manpower and

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84. According to Terrence Burke, a former DEA official, "[t]he problem has been that . . . the volume of that paperwork is such at this time that we are virtually receiving no leads from that documentation, from those CTR's, because the analysts are overwhelmed with the volume of it." *International Money Laundering: Law Enforcement and Foreign Policy: Hearings Before the Subcomm. on Terrorism, Narcotics and International Operations of the Senate Comm. on Foreign Relations*, 101st Cong., 1st Sess. 5, 14 (1989) (statement of Terrence M. Burke, Deputy Assistant Adm'r, Operations Div., Drug Enforcement Admin.) [hereinafter *Senate International Money Laundering Hearings*]; *see* SUBCOMM. ON NARCOTICS, TERRORISM AND INTERNATIONAL OPERATIONS, SENATE COMM. ON FOREIGN RELATIONS, 101ST CONG., 2D SESS., REPORT ON DRUG MONEY LAUNDERING, BANKS AND FOREIGN POLICY 7 (1990) (Senate print 101-104) [hereinafter SENATE NARCOTICS SUBCOMM. REP.] (quoting the foregoing statement). According to Burke, CTRs are primarily used "as a source of information that we go to confirm other information that we have developed from other sources." *Senate International Money Laundering Hearings*, *supra*, at 15. A Senate subcommittee report concluded that "[c]riminals take advantage of the backlog in CTR analysis by actually filing [CTRs]." SENATE NARCOTICS SUBCOMM. REP., *supra*, at 7. Burke told the Senate that in an undercover sting, Operation Polarcap, Wells Fargo bank officials only became suspicious of money launderers who caused CTRs to be filed when they examined the numbers of such reports and total deposits at each branch bank. They concluded that, although the CTRs had all been properly filed, "the business was not a typical cash-intensive business." *Id.*

85. 55 Fed. Reg. 36,663 (1990) (to be codified at 31 C.F.R. §§ 103.22, .27); *see Senate International Money Laundering Hearings*, *supra* note 84, at 86-89 (statement of Hon. Salvatore B. Martoche, Assistant Secretary for Enforcement, U.S. Dep't of the Treasury).

86. Annunzio-Wylie Anti-Money Laundering Act, Pub. L. No. 102-550, §§ 1511, 1513, 1515, 1517, 106 Stat. 3672, 4056-60 (1992) (to be codified in scattered sections of 12 U.S.C & 31 U.S.C.).

resources and that the "government is totally outgunned."[87] This situation is not improving.

Finally, the CTR system is inflexible. Several institutions have asked that they be allowed to submit CTRs via electronic media, only to be rejected by the IRS because the institutions were not fully automated. The message sent to the banking industry is clear: the government appears unwilling to attempt to respond to industry suggestions for streamlining the CTR process.

IX. Possible Solutions

One major proposal, finally enacted, was the creation of a panel of advisors from the public and private sectors to determine how to get the most out of the BSA.[88] This change arose out of a long-standing ABA recommendation that the BSA be amended to create a permanent advisory group similar to the Federal Reserve Board's Consumer Advisory Council.[89] It had been partially included in a 1989 proposal by Senator John Kerry that would have created an "Anti-Money Laundering Advisory Commission"[90] and was finally enacted in 1992.[91]

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87. Senate Narcotics Subcomm. Rep., *supra* note 84, at 18 (quoting Chuck Morley).

88. *See* Annunzio-Wylie Anti-Money Laundering Act, Pub. L. No. 102-550, § 1564, 106 Stat. 3672, 4073 (1992) (to be codified at 31 U.S.C. § 5311 note).

89. *See* 12 C.F.R. pt. 267 (1992). This part basically organizes and governs the Consumer Advisory Council of the Federal Reserve Board. *Id.* The purpose of this Council is to "advise and consult with the [Federal Reserve] Board in the exercise of the Board's functions . . . and with regard to other matters the Board may place before the Council." *Id.* § 267.2. Authority to alter the rules governing the Council rests in the Federal Reserve Board. *Id.* § 267.6.

90. S. 1476, 101st Cong., 1st Sess. (1989), *microformed on* Sup. Docs. No. Y 1.4:101-1476 (U.S. Gov't Printing Office).

91. Annunzio-Wylie Anti-Money Laundering Act, Pub. L. No. 102-550, §§ 1500-1565, 106 Stat. 3672 (1992) (to be codified in scattered sections of U.S.C.). Section 1564 of the Act requires the Secretary of the Treasury to establish a "Bank Secrecy Act Advisory Group" to advise the Secretary on how to modify reporting requirements to enhance law enforcement and to inform the private sector on the uses of reported information. *Id.* § 1564, 106 Stat. at 4073 (to be codified at 31 U.S.C. § 5311 note).

Section 1564 specifies the following:

> (a) Establishment.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall establish a Bank Secrecy Act Advisory Group consisting of representatives of the Department of the Treasury, the Department of Justice, and the Office of National Drug Control Policy and of other interested persons and financial institutions subject to the reporting requirements of subchapter II of chapter 53 of title 31, United States Code, or section 6050I of the Internal Revenue Code of 1986.

A version of this idea was utilized by the Office of National Drug Control Policy for several years.[92] A group of public- and private-sector experts was formed and met occasionally to discuss concerns surrounding the government's money laundering deterrence efforts. Unfortunately, many of the issues discussed were never acted upon, and the group no longer meets. Without a regular forum that enables Treasury officials to understand industry *and* law enforcement concerns with the BSA, regulations will continue to be promulgated without consultation of all relevant information. It is the ABA's hope that the new Bank Secrecy Act Advisory Group ("Advisory Group") will improve the current state of affairs.

A second major recommendation is to amend § 103.22 of the BSA regulations[93] to *raise* the monetary threshold for requiring CTR filings. The current filing requirement for any transaction in currency[94] involving more than $10,000 during one business day has been in effect since the original enactment of the BSA.[95] The $10,000 figure is no longer a proper threshold for currency transac-

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(b) PURPOSES.—The Advisory Group shall provide a means by which the Secretary—

(1) informs private sector representatives, on a regular basis, of the ways in which the reports submitted pursuant to the requirements referred to in subsection (a) have been used;

(2) informs private sector representatives, on a regular basis, of how information regarding suspicious financial transactions provided voluntarily by financial institutions has been used; and

(3) receives advice on the manner in which the reporting requirements referred to in subsection (a) should be modified to enhance the ability of law enforcement agencies to use the information provided for law enforcement purposes.

(c) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT. —The Federal Advisory Committee Act shall not apply to the Bank Secrecy Act Advisory Group established pursuant to subsection (a).

§ 1564, 106 Stat. at 4073-74.

92. *See ABA Newsletter: New Help in Fighting Against Money Laundering*, ABA BANKING J., Oct. 1989, at 165 (reporting on a proposal, suggested by the ABA, to create a panel to advise the Office of National Drug Control Policy).

93. 31 C.F.R. § 103.22 (1992).

94. A "transaction in currency" is defined as any "transaction involving the physical transfer of currency from one person to another." 31 C.F.R. § 103.11(r) (1992). Thus, "any cash going into or out of a bank (or through an agent of the bank)" falls within the definition of a "transaction in currency." COOK, *supra* note 36, at 24; *see id.* at 22 ("In other words, reporting requirements are triggered only for transactions in which cash goes into or out of a bank.").

95. 31 C.F.R. § 103.22 (1992).

tions in the 1990s, and serious consideration should be given to adjusting the amount. This modification might adversely affect the current BSA education process,[96] and many CTR filers are already on-line so adjustments would have to be made. Nevertheless, the decrease in total filings would have a beneficial effect on industry costs and usefulness to law enforcement agencies. This issue is ripe for consideration by the Advisory Group.

Since there has never been a serious discussion about altering this threshold, a debate on its increase should begin promptly. To what level should the threshold be raised? The CTR filing requirement should apply only to corporate currency transactions involving more than $25,000, but it should remain at $10,000 for transactions by individuals. Economists have analyzed the $10,000 level, while adjusting the figure to account for inflation and other appropriate factors, and have determined that the threshold reporting amount would be closer to $36,000 in 1992 dollars.[97] Therefore, this proposed $25,000 threshold is workable and would continue to provide useful information to law enforcement.

Other recommended changes include simplifying the CTR form.[98] Many discussions with IRS officials over the years have convinced bankers that the form needs to be redesigned. Certain information presently required on the CTR—the transaction date,[99] identifying information,[100] the transaction amount,[101] the date of birth of both the transacting party[102] and the party on whose behalf the transaction was conducted,[103] and the amount of the transaction that involved denominations of one hundred dollar bills or higher[104]—should, of course, be retained. The private sector

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96. *See supra* note 25 (listing examples of seminars offered as a part of the ABA's educational efforts); COOK, *supra* note 36 (training course for bank personnel to enable bankers to understand and comply with Bank Secrecy Act). Seminars would need to be modified, and other educational materials—such as Cliff Cook's book—would require revision.

97. These estimates were given to the author by economists from the Puget Sound Bank, Puget Sound, Washington.

98. *See* I.R.S. Form No. 4789.

99. *Id.* box 37.

100. *Id.* Parts I-II, V.

101. *Id.* box 35.

102. *Id.* box 14.

103. *Id.* box 30.

104. *Id.* box 36.

could (and should) assist the government in developing a new CTR form.

Other proposals include simplifying identification requirements for established customers;[105] eliminating "on behalf of" information for husband and wife joint account transactions;[106] eliminating Part III information (which is covered by the general record retention requirements);[107] and simplifying essential information regarding the type of transaction.[108]

The government should also consider simplifying Part V information to retain only "1099-like"[109] identification information regarding the bank where the transaction took place. For example, the bank name, the address of its headquarters, and the taxpayer information number could be on a simplified form. Other institutions have recommended eliminating the box for information regarding multiple transactions.[110] This information is contained in the bank's records if it is needed.

The banking industry also questions the value of reporting "cash out" for purposes of money laundering.[111] Careful analysis should be given to the usefulness of this information, especially if the industry has a strong "know your customer" policy.[112]

Moreover, it is questionable whether the bank should be required to prepare the CTR. As is presently the case with Currency and Monetary Instruments Reports (CMIRs),[113] consideration should be given to having the customer prepare *and* sign a simplified CTR. Under this scheme, the customer would complete the CTR and submit it to the bank as an absolute prerequisite to conducting a reportable currency transaction. This procedure would

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105. *See id.* Part II.
106. *See id.* box 16.
107. *See* 31 C.F.R. § 103.34 (1992); I.R.S. Form No. 4789 Part III.
108. *See* I.R.S. Form No. 4789 Part IV.
109. *See* I.R.S. Form No. 1099 (Miscellaneous Income).
110. *See* I.R.S. Form No. 4789 box 48.
111. *Id.* boxes 34-36.
112. *See infra* part XII.
113. The CMIR is a Customs form for carrying currency or other monetary instruments into or out of the United States. U.S. Customs Form No. 4790, *reprinted in* 4 PETER B FELLER, U.S. CUSTOMS AND INTERNATIONAL TRADE GUIDE app. IV-76 to -77 (1992). A CMIR must be filed by anyone who "transports, mails, or ships . . . currency or other monetary instruments in an aggregate amount exceeding $10,000 . . . to any place outside the United States." 31 C.F.R. § 103.23(a) (1992). Anyone who receives such a shipment must also file a CMIR. *Id.* § 103.22(b).

clearly cut down on illegal transactions and would furnish the bank with immediate information on suspicious customers. Furthermore, requiring the customer's signature would allow the government to prosecute him for intentionally filing false statements. There are potential problems with aggregation and electronic filing, but if we are serious about cost effectiveness these issues can be resolved.

X. The Role of Exemptions

Exemptions are in desperate need of carefully coordinated government policy.[114] Exemptions from CTR filings are supposed to save banks money, eliminate routine CTRs, and assist the government in deterring money laundering.[115] However, there is no clear policy on the granting of exemptions, and Treasury's irrational rules on the matter have become another source of banker frustration.[116] For example, there needs to be further guidance, in the form of a mathematical equation, on how to establish "commensurate" CTR exemption limits to avoid subjectivity and possible examiner criticism.

Confusion abounds in this field. The main authority on exemptions is a 1988 handbook prepared by the Office of Financial Enforcement.[117] In 1992, many institutions still had not received this publication and have been forced to look elsewhere for assis-

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114. *See* 31 U.S.C. § 5318 (1988) (containing a statutory provision enabling the Secretary of the Treasury to create exceptions or exemptions); 31 C.F.R. § 103.45(a) (1992) ("The Secretary [of the Treasury] . . . may by written order or authorization make exceptions to or grant exemptions from the requirements of [31 C.F.R. pt. 103].").

115. *See* Office of Fin. Enforcement. Internal Revenue Serv., Dep't of the Treasury. Currency and Foreign Transactions Reporting Act: Exemption Handbook 1 (1988) [hereinafter Exemption Handbook].

116. As one commentator has noted,

> The regulations governing CTR filing reporting requirements historically have drawn apparently irrational distinctions between the types of customers that financial institutions can exempt. For example, if the goal is to detect criminal activity, then there is no apparent reason to allow financial institutions to exempt bars, restaurants, and race tracks from CTR reporting requirements and, at the same time, prohibit financial institutions from exempting churches, schools, and hospitals. . . .
>
> Most financial institutions would probably prefer fewer, but clearer, exemptions to more liberal exemption criteria that are difficult to interpret and apply. The Treasury['s] rules fail to meet that goal and have contributed considerably to the confusion over BSA compliance.

John K. Villa, *A Critical View of Bank Secrecy Act Enforcement and the Money Laundering Statutes*, 37 Cath U L Rev 489, 503 (1988) (footnote omitted).

117. *See* Exemption Handbook, *supra* note 115.

tance.[118] Moreover, the handbook has not been updated since it was released.[119] More importantly, many members of the law enforcement community are weary of exemptions and believe that they may actually assist money launderers.[120]

Banker response to law enforcement has been to eliminate or substantially reduce exemptions.[121] This change in direction by bankers has resulted in a new problem: a challenge by bank examiners to the narrowing of exemption lists.[122] These agency officials are threatening to penalize banks for "malicious compliance" with the BSA.[123] If the institution has too *few* exemptions, this is due in large part to the bank's reasoning that it is safer to file rather than not to file a CTR.[124] The response to exemption limits by the government is inappropriate, and there is no statutory basis for

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118. The "elsewhere" to which banks and other financial institutions look includes trade associations (such as the ABA) and other educational resources. *See supra* note 25 (citing brochures and newsletters announcing educational seminars); *see also* COOK, *supra* note 36, at 103-45 (discussing exemptions).

119. *See* EXEMPTION HANDBOOK, *supra* note 115.

120. DEA agents have told banker audiences that money launderers may purchase legitimate exempt businesses as fronts for their illegal activity. There is a consistent law enforcement theme promoting the view that exemptions should be discouraged.

121. In a 1992 Senate committee hearing, the ABA submitted the following findings:

- . U.S. financial institutions continue to be at the forefront of efforts to combat the laundering of profits from illegal drug trafficking.
- The Bank Secrecy Act (BSA), the main recordkeeping and reporting statute that assists law enforcement in pursuing money laundering, permits but does not require financial institutions to "exempt" certain transactions and the accounts of certain customers from the BSA's reporting requirements.
- "Exemptions" are not a "safe harbor" from civil or criminal liability even for institutions that have complied with the Treasury Department's regulations and Exemption Handbook.
- The Congress and federal law enforcement agencies have expressed concern that "exemptions" may be concealing the activities of money launderers and other white collar criminals who prey on financial institutions.

1992 Current Trends Hearing (Senate Subcomm.), *supra* note 60, at 310 (statement of the ABA). Based on these findings, the ABA recommended that banks create an exemption *only* if that exemption (1) "poses no risk of inadvertently concealing a customer engaged in criminal activity," (2) "offers a significant net cost reduction (cost of producing 'exemptible' [CTRs] . . . less the cost of administration of the 'exemption')," and (3) "improves the quality of service to the depositor." *Id.*

122. *See* Villa, *supra* note 116, at 503 n.88.

123. "Malicious compliance" occurs when financial institutions "discard[] their exempt lists" and file CTRs on *every* transaction regardless of its exempt status. *Id.* This practice "has resulted in a substantial increase in CTR filings for an already overburdened system." *Id.*

124. *Id.*

charging banks with over-compliance. This confusion must be eliminated.

XI. The $3000 Rule

The banking industry was also affected by the passage of the $3000 rule in the 1988 Omnibus Drug Bill[125] and the subsequent implementing regulations.[126] While the rule's mandate came from Congress, it's implementation was clearly Treasury's responsibility.[127] Information on the utility of this requirement is sketchy at best, but the industry strongly believes that modifications can be made to this rule that will ease the regulatory burden on banks while nonetheless providing sufficient information to law enforcement.

The ABA has recommended changing the $3000 rule to require a "purchaser's log" only for noncustomers.[128] All *required* information on customers would be established when the accounts were opened and retained for the current BSA record retention period of five years.[129] At a minimum, the rules should be amended to eliminate the $3000 log requirement if a bank is required to file

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125. Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181. The so-called "$3000 rule" reads as follows:

> No financial institution may issue or sell a bank check, cashier's check, traveler's check, or money order to any individual in connection with a transaction or group of such contemporaneous transactions which involves United States coins or currency . . . in amounts or denominations of $3,000 or more unless—
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> (1) the individual has a transaction account with such financial institution and the financial institution . . . verifies that fact through a signature card . . . and . . . records the method of verification in accordance with regulations which the Secretary of the Treasury shall prescribe; or
>
> (2) the individual furnishes the financial institution with such forms of identification as the Secretary of the Treasury may require in regulations . . . and the financial institution verifies and records such information in accordance with regulations which such Secretary shall prescribe.

31 U.S.C. § 5325(a) (1988).

126. *See* 31 C.F.R. § 103.29 (1992).

127. In the Advance Notice of Rulemaking, the Treasury Department asked the financial industry to comment on how best to implement the requirement. *See* 55 Fed. Reg. 20,143 (1990) (codified at 31 C.F.R. § 103.29 (1992)).

128. *See* Letter from John J. Byrne, Senior Federal Legislative Counsel, Am. Bankers Ass'n, to Peter G. Djinis, Director, Office of Fin. Enforcement, U.S. Dep't of Treasury 12 (Apr. 24, 1992) (on file with the *Alabama Law Review*).

129. *See* 31 C.F.R. § 103.29(d) (1992) Under the current regulations for keeping logs, information is collected when the account is opened and is held for five years. *Id.*

a CTR on the same transaction. Currently, the two requirements are simultaneously triggered whenever a bank has knowledge that (1) an individual conducts two or more cash-in transactions during any one day totalling more than $10,000,[130] and (2) one or more of those cash-in transactions involved the purchase of one or more negotiable instruments that total between $3000 and $10,000.[131]

As argued in 1989 when the log requirement was first proposed, the legislative history clearly indicates that both Congress and Treasury intended that more expansive information would be required of financial institution nonaccount holders under § 5325 and that only limited information was necessary for account holders.[132] One suggested change would permit a financial institution to substitute its own recordkeeping system for the proposed log, at least for account holders who purchase cashier's checks, traveler's checks, money orders, and bank checks. Of course, this proposal is contingent on the information retained being consistent with the information required by Treasury. If this change were implemented, banks would be encouraged to continue selling those monetary instruments to account holders rather than opting to discontinue such sales.

This alternative would not affect the log requirement as to nonaccount holders. Due to the recognition of common money laundering techniques, many institutions already refuse to sell the foregoing instruments to nonaccount holders. Treasury could offer the option of keeping a chronological log only for nonaccount holders. Many institutions have indicated that the use of chronological logs are labor-intensive, so offering those institutions another option would be desirable.[133]

Finally, many comment letters sent by bankers to Treasury have suggested that the logs be maintained in the particular

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130. § 103.22(a)(1) (1992).

131. § 103.29 (1992).

132. *See* 31 U.S.C. § 5325 (1988). Gerald L. Hilsher, Deputy Assistant Secretary for Law Enforcement, told the House Banking Committee on June 8, 1988, that "[t]he intent of proposed section 5325 is to require identification from money launderers who are not account holders at the financial institutions where they purchase monetary instruments with cash." *Money Laundering Control Act Amendments of 1988: Hearing Before the House Comm. on Banking, Finance and Urban Affairs*, 100th Cong., 2d Sess. 4 (1988).

133. Two bills have been introduced in Congress that contain provisions eliminating the $3000 log for customers. *See* S. 265, 103d Cong., 1st Sess. (1993); H.R. 962, 103d Cong., 1st Sess. (1993).

branch where the transaction occurs. By not having to send the information to a central location, banks would save money, but the information would still be accessible for Treasury review.

XII. "Know Your Customer" Provisions

One of the most well-known phrases in banking circles in the area of criminal activity deterrence is "know your customer" (KYC). When the BSA was enacted in 1970,[134] the accompanying report specifically referred to the KYC provisions found in the recordkeeping section of the FDIC Act.[135] Thus, this term has been with the industry for quite some time.

A 1990 survey conducted by the ABA showed that eighty-six percent of the banking industry had established KYC guidelines.[136] The Financial Action Task Force[137] has also recommended KYC policies.[138] If standards are to be credible, however, they should be issued only after careful consultation with the private sector and all appropriate government agencies. All policies should be flexible and fairly general in scope, allowing banks the freedom to accept rules in the nature of those advocated by the staff of the Federal Reserve Board.

Any shift to mandatory KYC policies can succeed only if substantial changes are made to existing BSA requirements.[139] Micromanaging this important area of banking would be counterproductive.

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134. Bank Records and Foreign Transactions (Bank Secrecy) Act, Pub. L. No. 91-508, 84 Stat. 1114 (1970) (codified as amended in scattered sections of U.S.C.).

135. H.R. Rep No 975, 91st Cong., 2d Sess. 17 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4394, 4401-02; *see* FDIC Act, 12 U.S.C.A. § 1829b(c) (West Supp. 1992) (containing the KYC provision).

136. 1990 Survey, *supra* note 70, at 4.

137. During the 1989 Paris Economic Summit, heads of state and government from the G-7 countries and the President of the Commission of the European Community established a Financial Action Task Force to determine how governments could promote cooperation and effective action against drug-related money laundering. *See* H.R. Rep. No. 271, 101st Cong., 1st Sess. 46-47 (1989), *reprinted in* 1989 U.S.C.C.A.N. 3557, 3584-85; Scott E. Mortman, Comment, *Putting Starch in European Efforts to Combat Money Laundering*, 60 Fordham L. Rev. S429, S436 (1992).

138. Mortman, *supra* note 137, at S439, S451.

139. Section 1513 of the Annunzio-Wylie Act clearly gives the Treasury Secretary authority to create KYC requirements. Annunzio-Wylie Anti-Money Laundering Act, Pub. L. No. 102-550, § 1513, 106 Stat. 3672, 4058 (1992) (to be codified at 31 U.S.C. § 5318(a)(2)).

XIII. Wire Transfers

The banking industry is anxiously awaiting a decision by Treasury on the wire transfer issue. Since the promulgation of the first proposal in 1989,[140] the industry has feared an inappropriate response to the question of how funds transfers fit into the BSA compliance responsibilities of an institution. While Treasury Department staff have met with many industry officials and toured several wire facilities, whether Treasury will simply add yet another burden to the banking industry or will substantially modify the proposed regulations to balance cost to the industry with benefit to law enforcement is a question that remains unanswered.[141]

As it stated in 1991, the ABA believes that the regulatory burden and other costs the banking industry would face as a result of this proposal outweigh the incremental benefit that would inure to law enforcement in having access to specific information on virtually all funds transfers.[142] Addressing any weaknesses in the

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140. 54 Fed. Reg. 45,769 (1989); *see* 55 Fed. Reg. 41,696 (1990) (to be codified at 31 C.F.R. §§ 103.11, .25, .33) (proposed Oct. 15, 1990).

141. In a recent law review article on this proposal, one author reached the following conclusion:

> The funds transfer proposal reflects weaknesses in the Treasury's current approach to regulations under the Bank Secrecy Act. It demonstrates a willingness to impose substantial new obligations on the banking system without careful evaluation of their potential efficacy, without measuring the utility of prior regulations before adopting additional regulations, and without regard to costs imposed on the banking community. It also suggests a lack of coordination with other federal financial regulatory agencies, particularly the Federal Reserve Board, and a lack of appreciation of potential benefits in developments such as the adoption of U.C.C. Article 4A and the forthcoming revision of the CHIPS format. Finally, the funds transfer proposal, as well as the other new requirements proposed in 1989 and 1990, suggests that existing methods of detecting money laundering are not working and argues for a comprehensive approach to detecting, prosecuting, and deterring money laundering.

Sarah J. Hughes, *Policing Money Laundering Through Funds Transfers: A Critique of Regulation Under the Bank Secrecy Act*, 67 Ind. L.J. 283, 330 (footnote omitted).

142. A 1991 article about the proposal pointed out the following:

> Cost figures for implementation of the new regulations varied. Based upon a survey of 66 banks, the Bankers Association for Foreign Trade (BAFT) concluded that the proposed wire transfer amendments would impose over $160 million in start-up and first-year implementation expenses on the 300 largest banks. Using Treasury's estimate of 7.8 million man hours per year to implement the regulations, the Bank Administration Institute (BAI) concluded that it would cost banks approximately $131 million each year for manpower compliance and an additional $70 million for computer equipment, materials[,] and training. The largest banks estimated that it would cost them between $14 million and $20 million in the first year to comply with the regulations. One medium-sized bank estimated that it would cost $7 million to

existing recordkeeping system rather than adopting a totally new and enhanced system represents a more workable and less disruptive alternative. It is encouraging to see that Congress has recognized cost concerns as legitimate and has now mandated that a cost analysis be completed.[143]

XIV. Suspicious Transactions

The procedure for filing criminal referral forms (CRFs) for money laundering and BSA violations needs to be improved. Confusion still exists over how the "suspicious transaction" box[144] on the CTR fits into the filing of the CRF. The CTR box is voluntary, but the CRF is not; Treasury must continue to stress this distinction.

With the creation of FinCEN and the acknowledgement that the agency will coordinate CRF filings for all agencies,[145] financial institutions should eventually be allowed to submit CRFs directly to FinCEN. This would eliminate tremendous duplication and costs to the banks. Moreover, the use of guidelines on suspicious transactions is desperately needed. Bankers need "red flags" to put into their policies. The publication of the *Trends* newsletter[146] is a step in the right direction, but more must be done to enhance communication and to clarify government policies.

It is frustrating for bankers who file the required CRFs in a professional manner to learn that the informal threshold in some regions for investigating a CRF is well over $100,000.[147] The CRF is being modified for distribution in 1993, so now is a good time to review its underlying policies. The issue of resources must also be addressed.

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implement, and a smaller bank estimated that it would cost $55,000 initially and $106,300 annually.

Amy G. Rudnick & Julie A. Stanton, *Banks Are Concerned over Treasury's Wire Transfer Proposal*, Banking Expansion Rep., Feb. 18, 1991, at 1, 14, *available in* LEXIS, Banking Library, BNKPOL File.

143. *See* Annunzio-Wylie Anti-Money Laundering Act, Pub. L. No. 102-550, § 1541, 106 Stat. 3672, 4067 (1992).

144. *See* I.R.S. Form No. 4789 box 1(c).

145. *See supra* note 54 and accompanying text.

146. *See supra* note 55 and accompanying text.

147. It should be noted that, while such informal thresholds do exist, United States Attorneys have never confirmed their existence.

While the reporting of suspicious transactions is on the rise, feedback on information is still minimal. The resources allocated to the reporting of criminal activity by the industry are extensive.[148] Therefore, the government should spend an appropriate amount of time fashioning a consistent policy.

XV. The Battle for a Safe Harbor

As Treasury is well aware, financial institutions are constantly providing the government with information on suspicious transactions. One outstanding concern of the banking industry has been the level of protection from criminal and civil liability for reporting suspicious transactions to the proper law enforcement authority. Of course, any disclosure to government authorities must be accomplished only through clearly established procedures that protect customers' financial privacy.[149]

Financial institutions should have the option of refusing to do business with individuals or corporations who may reasonably be suspected of engaging in illegal activity, but current law makes that difficult or impossible.[150] Banks have found themselves in the position of being required to monitor their customers' transactions, prepare and file CTRs,[151] report suspicious activities that appear to be criminal,[152] and avoid either direct or indirect participation in structuring money laundering transactions or receiving the proceeds of criminal activities.[153] These laws and regulations have sometimes placed banks "in the untenable position of complying as

148. *See* Payments Sys. Comm. Ass'n of Reserve City Bankers, Survey of Suspicious Transactions: Final Report of the Subcomm. and Task Force on Money Laundering (1992) (discussing training and other resource allocation issues).

149. As the ABA stated in 1972,

> "[w]e believe that additional positive legislation is needed to assure the public that their bank records will not be available to government agencies except under proper safeguards," and [ABA] suggested that could be accomplished by the addition of simple language requiring a subpena [sic] or summons before such material could be examined.

No Fishing, Am. Banker, Aug. 18, 1972.

150. *See 1992 Current Trends Hearing (Senate Subcomm.)*, *supra* note 60, at 299.

151. *See* 31 C.F.R. § 103.22 (1992).

152. In addition to filing CTRs, financial institutions must file "Criminal Referral Forms" to the government if money laundering or other criminal violations are suspected. 12 C.F.R. § 21.11(b)(1)-(4) (1992).

153. *1992 Current Trends Hearing (Senate Subcomm.)*, *supra* note 60, at 299 (statement of the ABA); *see* 31 C.F.R. § 103.53 (1992).

'good corporate citizens' while being subjected to potential lawsuits for privacy violations, defamation, breach of contract[,] and lender liability."[154]

For example, if a bank reports a customer as a potential money launderer and continues to do business with that customer, it may have violated the MLCA by doing business with a suspected money launderer.[155] On the other hand, if the bank declined to do business with the customer, it historically faced a lender liability suit, with the reported information capable of being used against it.[156] "In those instances where banks are cooperating in government law enforcement efforts, it is incumbent upon the government to protect the banks from such liability."[157]

There remains the distinct possibility that a well-run financial institution could face both criminal and civil liability because of inadequate protections under the law.[158] If they fail to uncover money laundering, or even if they uncover suspected money laundering and actually report it, banks could face criminal liability.[159] "Public policy plainly requires that financial institutions take an aggressive attitude toward potential money laundering . . . ."[160] Therefore, the ABA has asked Treasury and other appropriate government agencies "to review possible avenues that may be expanded to give good corporate citizens the needed protection for the support they are giving law enforcement."[161] Fortunately, the drive for a civil safe harbor has succeeded.

Certain federal agencies have a long history of "safe harbor" protections.[162] "The policy is simple: as long as the regulated entity

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154. *1992 Current Trends Hearing (Senate Subcomm.)*, *supra* note 60, at 299.

155. *Id.*; *see* 18 U.S.C. §§ 1956-1957 (1988 & Supp. III 1991).

156. *1992 Current Trends Hearing (Senate Subcomm.)*, *supra* note 60, at 299.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.* at 299-300.

161. *Id.* at 300. For example, bank employees with Stone Oak National Bank in San Antonio, Texas, have been involved in a protracted case brought by the U.S. Department of Justice after the bank had reported suspicious transactions and received assurances that they had complied with the law. *See* Teresa J. Dean, *San Antonio CTR Case Shows Crying Need for Safe Harbor*, ABA BANKERS WKLY. (Am. Bankers Ass'n, Washington, D.C.), Apr. 14, 1992, at 1; Sandra Lowe, *Stone Oak Settles Case With Feds*, SAN ANTONIO BUS. J., Mar. 20-26, 1992, at 1.

162. *1992 Current Trends Hearing (Senate Subcomm.)*, *supra* note 60, at 300; *see, e.g.*, 12 C.F.R. § 18.11 (1992) (concerning disclosure of information by national banks); 12 C.F.R. § 350.11 (1992) (concerning disclosure by FDIC-insured banks); 12 C.F.R. § 621.23

maintains a diligent and serious compliance effort and fully reports all legal violations, the entity should not face prosecution or civil liability."[163]

As the ABA told Congress in 1992,

> The Securities and Exchange Commission (SEC) adopted a safe harbor program for dealing with the misuse of corporate funds, such as illegal political contributions, kickbacks, and payments to individuals and officials overseas. The SEC implemented a voluntary compliance program to the effect that, if a corporation conducted its own investigations and then remedied its problems, the SEC would give credit to the corporation when it was deciding whether to pursue an enforcement action. More recently, the SEC advocated the use of a safe harbor in the context of the Bank Secrecy Act. In a comment letter to the Department of Treasury, the SEC recommended a "safe harbor be provided in . . . [reporting] regulations for firms that have developed and effectively implemented procedures reasonably designed, in light of the size, sophistication[,] and structure of the firm, to uncover multiple, same day transactions." The SEC went on to point out that "this approach will encourage more effective surveillance of currency transactions by financial institutions while providing those firms protection against liability where they have implemented good faith procedures."
>
> In addition, the American Bar Association's Criminal Justice Section recommended to [its] House of Delegates that the United States "adopt prosecution policies to encourage compliance with the Bank Secrecy Act and the Money Laundering Control Act by establishing guidelines and standards governing prosecution of financial institutions."
>
> Finally, the publication of the G-7 Financial Action Task Force Report on Money Laundering confirms the need for a safe harbor on an international level. Recommendation 16 of the report states:
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> > If financial institutions suspect that funds stem from criminal activity, they should be permitted or required to report

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(1989) (requiring annual reports by the Federal Agricultural Mortgage Corp.); 17 C.F.R. § 230.151 (1992) (concerning SEC guidelines on annuity contracts).

163. *1992 Current Trends Hearing (Senate Subcomm.)*, *supra* note 60, at 300; David P. Doherty, *The SEC's Management Fraud Program*, 31 Bus. Law. 1279, 1281-82 (1976) (noting the SEC's position that the fact that a corporation voluntarily comes forward with a suspected violation and conducts its own good faith investigation should be considered when the SEC decides whether to prosecute the corporation for the violation); Letter from Jonathan G. Katz, Secretary, Sec. & Exch. Comm'n, to Jonathan J. Rusch, Office of Fin. Enforcement, U.S. Dep't of Treasury 2 (Mar. 20, 1987) (on file with the *Alabama Law Review*).

> promptly their suspicions to the competent authorities. Accordingly, there should be legal provisions to protect financial institutions and their employees from criminal or civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory, or administrative provision, if they report in good faith, in disclosing suspect criminal activity to the competent authorities, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.[164]

The Justice Department, which had opposed mandatory adoption of a prosecution policy in the past, has developed prosecution guidelines which were released in October 1992.[165] These have been a tremendous help to banks, because all United States Attorneys are now required to get approval from the Justice Department for any money laundering prosecutions pursued against financial institutions.[166] The time has come to protect an industry that is willing to be part of the frontline in the war on drugs.

Congress has finally reacted to the problem and addressed the issue. In 1990, the House Banking Committee stated:

> The Committee is concerned that financial institutions have been reluctant to report suspicious transactions to law enforcement authorities because of concern for potential civil liability resulting from the filing of the report. Financial institutions are also reluctant to cease doing business with customers whom they suspect are engaged in illegal activities out of concern for liability to those customers. In one case, a court held the bank civilly liable for terminating a business relationship with a customer, even though the bank had been told (erroneously) by Federal law enforcement authorities that the customer was engaged in illegal activities.
>
> In order to encourage financial institutions to report suspicious transactions and to encourage financial institutions to terminate relationships with customers who may be engaged in illegal transactions but who have not yet been charged with any offense, the Committee amends the Right to Financial Privacy act to provide an exemption from civil liability for any institution which, in good

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164. *1992 Current Trends Hearing (Senate Subcomm.)*, *supra* note 60, at 300-01 (footnote omitted) (statement of the ABA).

165. ATTORNEYS' MANUAL, *supra* note 29, § 9-105.000 (Supp. 1992).

166. *Id.*

faith, files a suspicious transaction report or who refuses to do business with a customer that the institution has in good faith reported.

The Committee emphasizes that this exemption from liability applies only when the referral has been made in good faith. It does not apply to the filing of a referral simply as an attempt to evade liability for an otherwise impermissible purpose or motive.

The Committee intends "good faith" to mean that the report has been filed with an honesty of intention, observing the reasonable standards of fair dealing in filing the report.[167]

The banking industry has been given a partial remedy to this decade-old problem in a provision passed in the Annunzio-Wylie Anti-Money Laundering Act.[168] This provision mandates that financial institutions and their directors, officers, and employees must report suspicious transactions relevant to possible violations of law or regulation to the Treasury Secretary.[169] The measure also includes a safe harbor provision that exempts from civil liability any financial institution which, in good faith, reports suspicious transactions.[170] As a result, bankers who report potential violations of the laws or regulations now have protection from customer lawsuits under federal, state, or local law. This is a tremendous victory for good corporate citizens. Bankers will continue to press forward to obtain clearer guidance under the criminal laws, but this concession from Congress should greatly assist bankers in their role in the battle against illegal activity.

XVI. Conclusion

The BSA was designed to assist the government and have a "high degree of usefulness" in certain proceedings,[171] but the time has come for review. Bankers generally believe that the method of communicating BSA and related changes to the industry has never worked. Banks and trade associations frequently ask for clarifica-

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167. H.R. Rep. No. 446, 101st Cong., 2d Sess. 33-34 (1990). The amendment was supported by the Treasury, which cited Ricci v. Key Bancshares, 768 F.2d 456 (1st Cir. 1985), as a reason for allowing a bank to "sever relations" with a customer because of activities underlying a suspicious transaction report.

168. Annunzio-Wylie Anti-Money Laundering Act, Pub. L. No. 102-550, § 1517, 106 Stat. 3672, 4059 (1992) (to be codified at 31 U.S.C. §§ 5314, 5324).

169. § 1517(b), 106 Stat. at 4060 (to be codified at 31 U.S.C. § 5318(g)(1)).

170. § 1517(b), 106 Stat. at 4060 (to be codified at 31 U.S.C. § 5318(g)(3)).

171. *See supra* note 3 and accompanying text.

tion on a variety of issues, ranging from CTR completion to general interpretive analysis. Individual responses to these questions are not provided in a timely fashion. In addition, the process of determining what constitutes a "major" or "minor" rule *must* change. If the Bush Administration's call to address regulatory burden is to be answered by the Clinton Administration, the public needs to know how the agencies make their determinations. The affected industry should be able to supply information on their cost estimates and have them seriously considered.

Do each and every one of these new laws have an impact on slowing down the drug traffickers? No. Clearly, the creation of the money laundering laws as well as the heightened awareness by the government and the industry of their respective roles in the drug war has had a major effect. However, some of the increases in reporting or recording of routine transactions will detract from bankers' ability to focus more serious efforts on eliminating the movement of drug money. Deterrence works only if risks are raised sufficiently. Fortunately, through the passage of several major laws, the ABA believes that the risks involved in attempting to launder money through financial institutions are now significant. Voluntary reporting of suspicious transactions is on the rise, which will increase the overall effectiveness of deterrence.

It cannot be overemphasized that not all of the recent changes have been useful. Therefore, the ABA continues to urge that Congress and the banking industry be kept apprised of the law enforcement utility of information submitted to the government. Even though there is general agreement within the industry on the need for extensive cooperation in the war on drugs, there is good faith skepticism on the utility of all of the required information submitted to the government.[172]

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172. Gerald L. Hilzher, Former Deputy Assistant Secretary for Law Enforcement at the Treasury Department, made the following remarks to an audience in September, 1988:

> In my opinion, the Treasury Department has done a poor public relations job in not telling the private sector what the Treasury Department is doing with this information and what kinds of cases the Treasury Department is making. The Treasury Department need [sic] to keep better statistics because although Title 31 convictions are not the only measure of BSA effectiveness, we have not brought forth statistics on other aspects of BSA utility. The federal government has good examples of individual cases brought as a result of BSA compliance, but the Treasury Department, for example, can't state the degree to which BSA compliance has resulted in increased tax revenues. One of the recommendations that I will be making from this roundtable is to do a better job of tracing Title 31 involvements in criminal and tax cases, so that

We must remember that the Financial Action Task Force did not unanimously adopt a cash reporting structure as one of its recommendations and that the Drug Enforcement Agency has raised questions about the utility of such reporting.[173] While the ABA is not adding its voice to the list of those who are completely opposed to the emphasis on routine reporting, it is clear that the system is not above review. The banking industry calls for an objective analysis of the proper role of cash reports and reports of suspicious transactions in the efforts to deter money laundering.

The banking industry and the ABA supported most of the legislative efforts aimed at deterring money laundering in 1986. It is therefore frustrating to hear attacks on bankers for not accepting each and every proposal offered by Congress or the agencies. Knowing that our reporting makes a difference significantly ease that frustration.

It is important that bank regulators appreciate the need to stop the flow of paper, a situation that is reaching epidemic proportions. In our ongoing efforts to prove that routine reports are less effective than specific reports, we will continue to point out all of the examples of suspicious transaction reporting by the industry that result in investigations or indictments, or both.

The creation of FinCEN, the enforcement organization that is designed to be a "governmentwide [sic], multi-source intelligence and analytical network in support of the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes,"[174] is an excellent step toward addressing the paper trail problem. The banking industry abhors money laundering and is working extremely hard to eliminate it from within our industry.

However, the cooperation we have been offering to the government and Congress must be met by a review of all laws affecting banks. The American Bankers Association will continue to cooperate, educate, and push for reform.

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next year, perhaps, we can bring these statistics to the financial community to show that we do have a program that makes sense.

MONEY LAUNDERING TASK FORCE, AM. BANKERS ASS'N, TOWARD A NEW NATIONAL DRUG POLICY 9 n.3 (Apr. 27, 1989), *reprinted in* 135 CONG. REC. S5555, S5557 (daily ed. May 18, 1989).

173. *See supra* part VIII.

174. GAO FINCEN REP., *supra* note 54, at 5.

PREPARED STATEMENT OF STEVE GREATHOUSE

CHAIRMAN, NEVADA RESORT ASSOCIATION

I am Steve Greathouse, President of Harrah's Casino Hotel Division. I appear today as Chairman of the Nevada Resort Association, an organization of 37 casinos, casino hotels, and resorts throughout Nevada. The association's members also have current or planned gaming operations in eleven other States, including Arizona, California, Colorado, Illinois, Indiana, Louisiana, Mississippi, Missouri, New Jersey, New York, and Washington State. With me today is Robert Faiss, our legal counsel. My remarks are brief and shall focus on the policies embodied in S. 1664. Mr. Faiss will then discuss specific provisions of the bill.

Our association supports S. 1664 and its primary goals—increasing the effectiveness of governmental and private efforts to control money laundering while reducing the regulatory burden on private businesses. Over the course of the last year, the association has sought to advance those goals by working with the Treasury Department to help refine casino cash reporting regulations to effectively deter and detect money laundering without creating an unnecessary regulatory burden on business. We pledge to continue working in cooperation with Treasury to reach those goals.

Although S. 1664 is primarily directed toward banks, sections 7 and 8 envision a comprehensive State licensing scheme for non-bank financial institutions that are engaged in transmitting money. Our association endorses this concept of comprehensive State regulation as a complement to Federal cash reporting regulations. We believe that casino regulation in the State of Nevada provides an excellent example of the effectiveness of such comprehensive State regulation being used to augment the Federal cash transaction reporting requirements. We believe the benefits of such an effective State regulatory program, built around the cash reporting parameters of the Federal authorities, can be realized for all non-bank financial institutions as well as casinos. However, we submit that such a State licensing and regulatory scheme loses much of its utility and economy if the Secretary of the Treasury is restricted from entering into enforcement agreements with the State licensing and regulatory authorities.

We believe the Secretary of the Treasury must have the discretion to enter into agreements with the various jurisdictions to enforce cash reporting regulations as part of a comprehensive State regulatory and licensing scheme. H.R. 3235, the House counterpart to S. 1664, removes this discretion of the Secretary to enter into such enforcement agreements with States. We submit that the Secretary's power to enter into such agreements which is undisturbed by S. 1664, can only add to the effectiveness of the State licensing and enforcement schemes such as those envisioned by sections 7 and 8 of S. 1664.

Moreover, we believe that all gaming jurisdictions, whether they be States or the regulatory bodies in charge of Indian gaming, should have the option of entering into such enforcement agreements with the Treasury. Currently, only States have this ability. If such State or Indian jurisdictions are able to satisfy the Secretary of the Treasury that they have comprehensive regulatory systems that provide Treasury the information sought by the Federal cash reporting laws, the Secretary should have the discretion to enter into enforcement agreements with those jurisdictions. This allows the Secretary to obtain the information needed for Federal anti-money laundering efforts, with minimum allocation of Federal resources. The avoidance of duplicative State and Federal regulations also lessens the compliance costs of the regulated businesses and the enforcement costs of Government.

In summary, we support the bill and its goals, but ask that the final language of the bill specifically give all jurisdictions the opportunity to create and enforce comprehensive cash transaction reporting laws through enforcement agreements with the Secretary of the Treasury. If the jurisdiction can demonstrate to the Secretary's satisfaction that the cash transaction reporting laws will enhance and complement the Federal anti-money laundering efforts without compromising enforcement, monitoring, or the quality or information provided to the Treasury, that jurisdiction should be given the opportunity to police cash transactions as part of its own regulation of the affected businesses. We believe the costs will ultimately be lower for both Government and business, while the effectiveness of anti-money laundering efforts will be enhanced.

PREPARED STATEMENT OF ROBERT D. FAISS

LEGAL COUNSEL FOR THE NEVADA RESORT ASSOCIATION
LIONEL SAWYER & COLLINS, LAS VEGAS, NEVADA

I am Robert Faiss, a partner in the Nevada law firm of Lionel Sawyer & Collins. We are legal counsel for the Nevada Resort Association and we have been privileged to represent that association in connection with cash transaction reporting matters ever since casinos were made subject to the Bank Secrecy Act about 10 years ago.

Steve Greathouse and I appear today as representatives of an industry that has a strong commitment to keeping itself free of money-laundering activity and takes pride in its success in doing so.

By virtue of an agreement with the Secretary of the Treasury, who in 1985 found Nevada had a regulatory system that substantially met the BSA requirements for casinos, our State enforces the goals of the BSA through regulation 6A of the Nevada Gaming Commission. Although adoption of this Anti-Money Laundering Act of 1993 would have no immediate or direct impact on Nevada, it is important to us because the agreement and the possibility of adjustments to it are under study by the Treasury Department and any change in the Act may ultimately affect Nevada casinos. Any development that affects casinos can have a decided impact on Nevada. As former Governor and now Senator Richard Bryan knows so well, Nevada's gaming industry, directly or indirectly, is responsible for about three-quarters of our tax revenue, economic activity, and employment.

Section 2

Section 2 of the bill calls for the Treasury Department to streamline the cash transaction report or "CTR" forms to eliminate information "which has little or no value for law enforcement purposes," and requires the Secretary of the Treasury to "seek to reduce" CTR filings by at least 30 percent. We endorse both objectives to lessen the CTR burden on businesses, which has been estimated at 19 minutes of employee time per CTR form.

Sections 3, 4, 5, and 6

We have no comment on sections 3, 4, and 5. With respect to section 6, we support its implications that the Secretary of Treasury should have the power to delegate enforcement authority for cash reporting.

Sections 7 and 8

Sections 7 and 8 of the bill recognize that State licensure and regulation is an effective method to regulate non-bank financial institutions. Equally important is the power of the Secretary to enter into enforcement agreements with the States to implement the Federal cash reporting laws or State laws patterned after the Federal cash reporting laws. Nevada provides an excellent example of the efficiency and utility of such State regulation of casino cash reporting pursuant to an enforcement agreement with the Secretary. We believe that if left undisturbed, it can serve as a model for many of the emerging gaming jurisdictions.

Since 1985, pursuant to its agreement with the Secretary, the Nevada State Gaming Control Board has vigorously enforced the State's cash reporting statutes and regulations. More than 240,000 CTR's have been filed by Nevada casinos in that period. The Gaming Control Board has levied fines totaling approximately $1.9 million against casinos for violations of these cash reporting laws, including one single fine of $1 million. Those were technical violations; in no case was there even the hint of money laundering. The most recent fine was for an act that is not even covered by title 31, an exchange of cash for cash in the amount of $3,500. That was a violation of the Nevada prohibition against the casino returning to the patron cash in denominations different from that received from the patron.

The Nevada casino regulations are a good example of an effective, yet pragmatic cash reporting system. They embody the goal we believe sections 7 and 8 of S. 1664 seek to achieve: Efficiency of the Federal cash transaction laws both in terms of resources employed and the results achieved.

That goal can be furthered by preservation of the Secretary's discretion to enter into enforcement agreements such as the 1985 agreement with Nevada. We commend the sponsors of S. 1664 for recognizing that repeal of the Secretary's discretion is unnecessary and could be counterproductive.

The growth of casino gaming has shown a dynamic surge in recent times. As Raymond C. Avansino, Jr., President of Hilton Hotels Corporation, said in a speech in January: "Casino gaming—be it on riverboats, in land-based casinos, or on native American reservations—is in place or in development in nearly twenty States."

Further, it has been estimated that every population center in the country will be within a 3-hour drive of casino gaming within 10 years.

Utilization of the gaming control agencies in the fight against money laundering can improve that effort, as the Nevada experience has shown. Nevada's contribution has been made with minimal burden on the Federal treasury. Our regulation 6A has proved even a better weapon against money laundering than the Federal casino regulations because it goes beyond mere reporting and actually prohibits some activities, such as exchanges of cash for cash or the casino's check for cash in excess of $2,500. Enforcement has been a priority with the State Gaming Control Board, which has forced regulation 6A to be a priority with licensees. As Board Chairman William Bible has stated, his agency spends 20,000 agent hours a year just on regulation 6A enforcement, which takes the form of compliance audits, covert inspections, and undercover operations. As one IRS spokesman told a group of Nevada gaming law attorneys last year, the Nevada regulators get the attention of the gaming industry much better than the Federal Government because the regulators have the power to revoke gaming licenses.

There is no need for Congressional revocation of the Secretary's discretion to do what is best to achieve anti-money laundering goals. If Nevada's exemption has enhanced the fight against money laundering, it would be counterproductive to that fight for the Congress to revoke it. On the other hand, if Nevada's exemption has weakened the fight against money laundering, the Secretary of the Treasury has the authority to revoke it without Congressional action.

Further, we cannot identify a public interest that would be served by stripping the Secretary of the flexibility the exemption authority gives him without benefit of the results of the study now underway by the Money Laundering Review Task Force.

The Nevada gaming industry intends to support the work of the Task Force. We fully expect that a review will find the casino industry is so diverse, not only between the different States but, as in Nevada, even within the same State, that the national interest will be benefited by the Secretary having the discretion through exemption agreements to shape anti-money laundering enforcement to meet the characteristics of a particular jurisdiction.

The availability of an exemption also will give States an incentive to enact and enforce a comprehensive program against money-laundering, thus strengthening the national effort.

As I am sure this Committee will hear in the days ahead, there is much more than a Nevada interest in this area. We understand the Colorado gaming industry has discussed with Federal authorities a possible request for an exemption similar to Nevada's. The matter is under discussion by the gaming industry in various States where casino gaming is now approved. Two weeks ago in Houston, the members of the National Gaming Law Council supported retention of the Secretary's exemption authority.

Thus, for maximum effectiveness of the weapons against money laundering, there is a need to preserve and protect the Secretary's discretion to enter into enforcement agreements with the States. As Mr. Greathouse testified, instead of revoking this discretion of the Secretary, the Congress should enhance its effectiveness by making it available to additional entities.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO FROM RONALD K. NOBLE

Dear Mr. Chairman:

This responds to your letters of March 28 and April 19, 1994. With your first letter, you transmit Senator Alfonse D'Amato's request for Treasury's comments on a Washington Post article entitled "Terror Dollars," about overseas counterfeiting and laundering of U.S. dollars. In your second letter, you inquire about a later Washington Post article on the same subject: "Overseas Counterfeiters Pose Threat to U.S. Currency.

Treasury appreciates and shares Senator D'Amato's and your concerns and is pursuing measures to combat counterfeiting of U.S. dollars and money laundering. Treasury's counterfeit deterrent effort is an ongoing process.

In 1991 Treasury added two overt features to enhance the security of U.S. currency. The first is a printed mylar security thread placed in the paper substrate which reads "USA" and the note's denomination when held to a light source. The second is microprinting which reads "United States of America" repeatedly around the portrait on the front of each note. Each feature was introduced in order to thwart counterfeiting by advanced color copiers and computer scanning equipment. While these features are difficult to copy or simulate, the public is largely unaware of their presence. As a result, their effectiveness has been diminished.

Since the latest design changes were introduced, Treasury has been working on the development of additional security features for the next generation of currency. In 1991, Treasury commissioned a study by the National Academy of Sciences to examine potential anti-counterfeit design features, and a report was issued in December 1993. (Copy enclosed.) In addition, Treasury has established the New Currency Design Task Force to further study such features. This task force comprises members from the Treasury Department, the Bureau of Engraving and Printing, the U.S. Secret Service, and the Federal Reserve Board. The results of their study and their recommendations will be presented to me later this spring.

A recall or replacement of U.S. currency, as proposed in the Washington Post articles, is not considered a viable alternative. There is over $100 billion in hundred dollar bills alone - 1,000,000,000 pieces of currency. There are over 15 billion pieces of U.S. currency in circulation, totalling about $340 billion.

All over the world people invest in U.S. currency as a hedge against unstable political and economic situations. Many others, both in and out of the United States, keep large sums of legitimately acquired U.S. dollars.

The Federal Reserve estimates that more than $200 billion in U.S. currency is outside of the United States, concentrated particularly in the emerging democracies of eastern Europe and the successor states to the USSR. Recalling these notes would be extremely difficult; replacing this currency with new notes would impose great costs on the United States government, impose many hardships and would take years to complete.

Moreover, recall of U.S. currency might undermine the world's confidence in that currency. The vast majority of circulated Federal Reserve Notes are not used in criminal enterprises and there are innumerable legitimate reasons to hold U.S. currency. In addition, law enforcement does not believe that recalling or changing the appearance of U.S. currency would have any long-term benefit in the fight against money laundering.

While Treasury welcomes innovative approaches to these difficult issues, Treasury cannot support a recall of U.S. currency as an effective anti-money laundering or anti-counterfeiting measure. There is no easy or definitive solution to the money laundering or counterfeiting problem. Nevertheless, we are optimistic that the strides made in the last few years both domestically and internationally have been significant. With international collaboration among countries and with the cooperation of the law-abiding public, the Administration will continue to progress.

Should you have further questions regarding this matter, please contact Peter G. Djinis, Director, Office of Financial Enforcement at (202) 622-0400.

Sincerely,

Lloyd Bentsen

Enclosure

:rrorDollars

nterfeiters, Cartels and Other Emerging hreats to America's Currency

By Robert H. Kupperman and David A. Andelman

IE U.S. dollar has become the tar-et of choice of an increasingly dan-erous collection of drug runners, ts and rogue states bent on destabi-ıe global political and financial or- · enriching themselves—and at ıoth.

:ding to U.S. and Israeli intelligence , a group of highly-skilled counterfeit-ebanon's Bekaa Valley, underwritten trolled by the intelligence agencies of l Syria, have turned out approximate-llion of the most nearly-perfect $100 t the Secret Service has ever detec-

e same time, according to the Drug :ment Administration, the financial of the leading drug cartels—espe-e highly-skilled money-runners of the anization—are moving great quanti-ıoney each year through and around rnational banking system.

: these two problems are somewhat a single set of relatively inexpensive s—one that might include the cre-a new overseas dollar—could neatly both.

cocaine industry money launderers least $20 billion out of the U.S. each ıays Gregory Passic, chief of the inancial investigations section.

lrug lords need the $20 billion they the United States and the billions sewhere to pay their army of merce-uel their transportation systems and politicians and law enforcement offi-ıose complicity allows their opera-

Kupperman is senior adviser of the 'or Strategic and International and a former State Department n international terrorism. David an, contributing editor of Worth ne and CNBC, writes on foreign ntelligence and finance.

tions to continue largely unchecked. Moreover, the cartels must be able to launder these funds efficiently; otherwise, their operations would quickly atrophy. The goal of law enforcement is to make it as difficult and costly as possible for these laundering operations to proceed. Already, U.S. drug enforcement experts say, the cost of laundering drug proceeds has been driven up from $6 per $100 to $26 per $100. But we have only begun to tackle the problem.

In the case of the Bekaa Valley counterfeiters, one aim is to disrupt the governments of such nations as Israel whose economies are heavily dependent on a stable dollar. Indeed Israeli authorities have reportedly discovered at least $10 million worth of bogus currency circulating in their country, according to Israeli currency experts.

A more important source of potential instability is the undermining of general international confidence in a major currency such as the dollar—which given the world's total dollar float of more than $1 trillion is somewhat more problematic. Yet with an estimated $1 billion worth of such bills reported to be in storage and available for circulation, according to a Secret Service source, there is the potential for greater instability of the currency at least abroad. Each year, only about $300 million worth of $100 bills is printed.

But the ultimate goal of the Bekaa Valley counterfeiters, according to U.S. and French intelligence officials who have been tracking their activities, is to buy or underwrite the development and production of a deployable nuclear device. In regions such as the former Soviet Union, particularly Ukraine where it will be several years under optimum circumstances before all deployed nuclear weapons can be dismantled and their fissile cores reprocessed, the going price for a nuclear bomb on the black market may be $100 million, according to U.S. non-proliferation spe-

cialists who have been quietly gathering information.

These same non-proliferation officials fear that in the hands of a nation such as North Korea or Iraq, high-grade counterfeit currency could also be ready coinage for purchase of the design technology and weapons-grade plutonium needed to go the final steps toward a functioning and deliverable nuclear device.

In Washington, a sensitive inter-agency working group, dubbed the Super-Bill Committee (a reference to the superior quality of the bogus currency), is already considering appropriate actions to meet this threat. Formed early last year by representatives from the Departments of State, Treasury and Defense, the CIA and Secret Service (whose charge includes protecting the integrity of currency as well as the safety of the president), the committee is studying a range of alternatives.

One strategy, already adopted, has been quietly to alter the currency in subtle ways. Beginning with the $100 bill and working its way down to the $10 bill, the Bureau of Engraving and Printing has begun inserting a thin polyester strip across each bill with the words "USA 100," "USA TWENTY," and "USA TEN" repeated along its width. All but invisible in regular use, the strip and the printing become readily apparent when held up to light. The main problem? Secret Service officials concede that the high-tech counterfeiters have already found a way of printing such a strip along their bogus notes—though it is not imbedded in the paper and lacks the very subtly raised feeling when touched.

"The problem is that anything you do to add security features to notes will be an additional cost for production of the notes," says Richard A. Rohde, special agent in charge of the counterfeit division of the Secret Service. "The United States prints some nine billion notes of all denominations each year, at a cost of 4 cents each. Adding more high-tech touches could raise that figure substantially. Each penny it costs us to print a more complex note costs us $90 million a year."

Last year, the Secret Service seized some $140 million in counterfeit bills. Some are of the high-tech variety. And these are believed to be only a fraction of all those in existence. Moreover, the existence of the high-tech $100 bills already cost the Federal Reserve several million dollars last year when, for several months, it quietly suspended the policy of charging back to all member banks any counterfeits the Fed detected. According to Fed spokesman Joseph R. Coyne, that policy was ended last May 3 when the banks had apparently become sufficiently adept at detecting such bills on their own.

There is an immediate, practical, even self-funding solution to this entire problem—one that has been raised during discussions in the Super-Bill Committee. It is to replace the U.S. $100 bill entirely. That is just what other nations have done from time to time down through the years when their currency was under present and immediate danger—a swap of old currency for dramatically new currency.

In 1969, the United States removed the $500 bill from circulation. Moreover, as Secret Service technical experts suggest, the technology exists to create a $100 bill that is more nearly counterfeit proof—at least in the near-term. The Secret Service and the Bureau of Engraving and Printing have produced prototypes of the bills with imbedded holograms, elaborate water-marks or other devices that render them difficult to duplicate by even the most sophisticated techniques.

A swap period would last a year, during which both old and new currencies would retain their value. At the end of the one-year window, all old currency would cease to be legal tender and could not be exchanged without a direct application to the Federal Reserve for hardship cases.

This swap of old for new currency has the supreme advantage of dealing with both primary threats to the U.S. currency with one dramatic act at once offensive and defensive—offensive against the drug cartels, defensive against terrorist and rogue states.

The exchange could be coupled with an added twist—creation of a two-tiered currency. Establishment of an overseas dollar, say the "redback," and a domestic dollar, the greenback, would be the perfect foil for the traffickers in international money-laundering. DEA officials concerned with money-laundering are privately very fond of this idea. Any overseas travelers, prior to their departure, would merely swap whatever greenbacks they might need overseas for redbacks. Money-launderers would be hard-

ed to convert $20 billion a year in this
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ı with a single stroke.

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y several billion dollars—certainly
h to pay for the cost of any such pro-

e attempt at a legislative fix is embod-
ı a measure, co-sponsored by Reps.
y B. Gonzalez (D-Texas) and James A.
ı (R-Iowa) and introduced last year in
ouse of Representatives, that gives the
lent the authority for just such actions.

Hearings are expected soon before the House Committee on Banking, Finance and Urban Affairs on the Leach-Gonzalez bill which formalizes the Super-Bill Committee by legislative authority, authorizes the president to introduce sanctions against any nations assisting in the counterfeiting of U.S. currency and allows the government to remove from circulation or change any bill of any denomination.

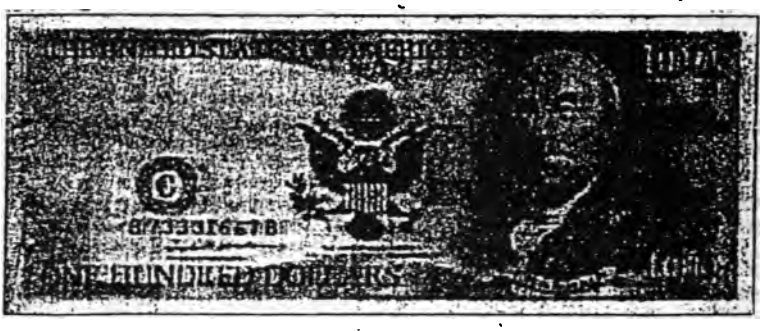
"This bill helps protect the integrity of the nation's financial system from counterfeiting and international terrorism," said Leach when he introduced the measure last spring.

Officials in the broad range of federal agencies concerned with these new challenges to the nation's currency are convinced that Congress must move quickly to give the president this kind of authority. They are equally convinced that the president must

APRIL 2, 1982 THE WASHINGTON POST

THE FEDERAL PAGE

Overseas Counterfeiters Pose Threat to U.S. Currency



By Bill McAllister
Washington Post Staff Writer

Terrorists may be on the verge of claiming a new victim: the U.S. greenback.

Officials at the Bureau of Engraving and Printing said yesterday that the agency is at work on new designs for U.S. currency amid reports that terrorist organizations may be flooding the world with counterfeit $100 bills.

The bogus money problem has become so severe that many overseas banks are refusing to accept the $100 bills. A leading terrorist expert said that the counterfeit dollars, being produced in the Middle East by terrorists' groups linked to Iran and Syria, could cause serious economic problems especially for small nations that rely on the U.S. dollar.

While confirming work on a new design, Bureau of Engraving officials were reluctant yesterday to discuss what changes they will recommend Treasury Secretary Lloyd Bentsen implement or to link the change to the increase of overseas counterfeiting. Congressional sources said they had been told that the Treasury hopes to announce the proposed changes later this month and said that the House Banking and Finance Committee is planning hearings on the issue.

Among the ideas said to be under consideration: moving portraits to the side, implanting small holograms on the bills, printing on watermarked paper, using multicolored patterns difficult for copiers to reproduce and printing with mulitcolored inks—all steps other countries have adopted.

One of the most dramatic proposals has come from Robert Kupperman, an expert on terrorism. He has called for a two-tiered money system: new greenbacks for domestic use, and new "redbacks"—dollars printed in red—for overseas use.

Coin World, a numismatic publication which this week disclosed the redesign effort, said it understood the new currency may closely resemble mock-ups made by "NOVA," a public television program. The "NOVA" dollars included safety features used by many foreign countries including multi-color printing, a portrait to the side and watermarked paper.

The Treasury Department has been reluctant to make major changes in the dollar, leaving the United States with what a Secret Service spokeswoman described as "the most stable currency in the world and the most easy to counterfeit."

A recent report by the National Academy of Sciences attacked the Treasury's current policy of relying on "traditional deterrents—unique high-quality paper, fine-line engraving and high pressure intaglio printing" to deter counterfeiters. In a world filled with highly sophisticated color copiers and scan-

ning devices, the academy said the United States needs a high-tech approach to protecting its currency.

Two years ago the Bureau of Engraving introduced two major changes to high-valued currency: extremely small printing called "micro-printing" and a polyester thread that also contains tiny printing. Coin World said those efforts have failed to thwart the counterfeiters and youngsters showed the newspaper how they could easily pull the polyester thread from the new currency.

Thomas A. Ferguson, the bureau's research director, confirmed that the agency is close to making final recommendations as to how the new currency should look. But he rejected suggestions that the terrorist problems had prompted the redesign effort.

"I can tell you with conviction that we will not make any changes this year," he said, noting that it would take longer, perhaps two years or more, to implement any changes. He said the redesign effort had begun two years ago and "hasn't changed in intensity because of any outside issues."

Figures provided by the Secret Service and interviews with terrorism experts suggest increasing concern over bogus dollars from abroad. In fiscal 1993, the agency said, there was five times as much counterfeit currency produced overseas ($120 million) as in the United States ($24 million).

Kupperman said that a group of counterfeiters in Lebanon's Bekaa Valley, directed by Iranian and Syrian intelligence agencies, are believed to have produced $1 billion worth of "the most nearly perfect $100 bills that the Secret Service has ever detected."

New currency may closely resemble mock-up, left, made by "NOVA," a public television program. Safety features include multicolor printing, portrait to the side and watermarked paper.

II

103D CONGRESS
1ST SESSION

S. 1664

To amend subchapter II of chapter 53 of title 31, United States Code, to improve enforcement of anti-money laundering laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17 (legislative day, NOVEMBER 2), 1993

Mr. BRYAN (for himself, Mr. BOND, and Mr. RIEGLE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To amend subchapter II of chapter 53 of title 31, United States Code, to improve enforcement of anti-money laundering laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti-Money Laundering Act of 1993".

SEC. 2. REFORM OF CTR EXEMPTION REQUIREMENTS TO REDUCE NUMBER AND SIZE OF REPORTS CONSISTENT WITH EFFECTIVE LAW ENFORCEMENT.

(a) IN GENERAL.—Section 5313 of title 31, United States Code, is amended by adding at the end the following new subsections:

"(d) MANDATORY EXEMPTIONS FROM REPORTING REQUIREMENTS.—

"(1) IN GENERAL.—The Secretary of the Treasury shall exempt, pursuant to section 5318(a)(5), a depository institution from the reporting requirements of subsection (a) (and regulations prescribed under such subsection) with respect to transactions between the depository institution and the following categories of entities:

"(A) Another depository institution.

"(B) A department or agency of the United States, any State, or any political subdivision of any State, including any entity established under the laws of the United States, any State, or any political subdivision of any State, or under an interstate compact between 2 or more States, which exercises governmental authority on behalf of the United States, the State, or the political subdivision.

"(C) Any business or category of business the reports on which have little or no value for law enforcement purposes.

"(2) NOTICE OF EXEMPTION.—The Secretary of the Treasury shall publish in the Federal Register at such times as the Secretary determines to be appropriate (but not less frequently than once each year) a list of all the entities whose transactions with a depository institution are exempt under this subsection from the reporting requirements of subsection (a) (and regulations prescribed under such subsection).

"(e) DISCRETIONARY EXEMPTIONS FROM REPORTING REQUIREMENTS.—

"(1) IN GENERAL.—The Secretary of the Treasury may exempt, pursuant to section 5318(a)(5), a depository institution from the reporting requirements of subsection (a) (and regulations prescribed under such subsection) with respect to transactions between the depository institution and a qualified business customer of the institution on the basis of information submitted to the Secretary by the institution in accordance with procedures which the Secretary shall establish.

"(2) QUALIFIED BUSINESS CUSTOMER DEFINED.—For purposes of this subsection, the term 'qualified business customer' means a business which—

"(A) maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act) at the depository institution;

"(B) frequently engages in transactions with the depository institution which are subject to the reporting requirements of subsection (a) (and regulations prescribed under such subsection); and

"(C) meets criteria which the Secretary determines are sufficient to ensure that the purposes of this subchapter are carried out without requiring a report with respect to such transactions.

"(3) CRITERIA FOR EXEMPTION.—The Secretary of the Treasury shall establish, by regulation, the criteria for granting and maintaining an exemption under paragraph (1).

"(4) GUIDELINES.—

"(A) IN GENERAL.—The Secretary of the Treasury shall establish guidelines for deposi-

tory institutions to follow in selecting customers for an exemption under this subsection.

"(B) CONTENTS.—The guidelines may include a description of the types of businesses or an itemization of specific businesses for which no exemption will be granted under this subsection to any depository institution.

"(5) ANNUAL REVIEW.—The Secretary of the Treasury shall prescribe regulations requiring each depository institution to—

"(A) review, at least once each year, the qualified business customers of such institution with respect to whom an exemption has been granted under this subsection; and

"(B) upon the completion of such review, resubmit information about such customers, with such modifications as the institution determines to be appropriate, to the Secretary for the Secretary's approval.

"(f) PROVISIONS APPLICABLE TO MANDATORY AND DISCRETIONARY EXEMPTIONS.—

"(1) LIMITATION ON LIABILITY OF DEPOSITORY INSTITUTIONS.—No depository institution shall be subject to any penalty which may be imposed under this subchapter for the failure of the institution to

file a report with respect to a transaction with a customer for whom an exemption has been granted under subsection (d) or (e) unless the institution—

"(A) knowingly files false or incomplete information to the Secretary with respect to the transaction or the customer engaging in the transaction; or

"(B) has reason to believe at the time the exemption is granted or the transaction is entered into that the customer or the transaction does not meet the criteria established for granting such exemption.

"(2) COORDINATION WITH OTHER PROVISIONS.—Any exemption granted by the Secretary of the Treasury under section 5318(a) in accordance with this section, and any transaction which is subject to such exemption, shall be subject to any other provision of law applicable to such exemption, including—

"(A) the authority of the Secretary, under section 5318(a)(5), to revoke such exemption at any time; and

"(B) any requirement to report, or any authority to require a report on, any possible vio-

lation of any law or regulation or any suspected criminal activity.

"(g) DEPOSITORY INSTITUTION DEFINED.—For purposes of this section, the term 'depository institution' has the meaning given to such term in section 19(b)(1)(A) of the Federal Reserve Act.".

(b) REPORT REDUCTION GOAL; REPORTS.—

(1) IN GENERAL.—In implementing the amendment made by subsection (a), the Secretary of the Treasury shall seek to reduce, within a reasonable period of time, the number of reports required to be filed in the aggregate by depository institutions pursuant to section 5313(a) of title 31, United States Code, by at least 30 percent of the number filed during the year preceding the date of enactment of this Act.

(2) INTERIM REPORT.—The Secretary of the Treasury shall submit a report to the Congress not later than the end of the 180-day period beginning on the date of enactment of this Act on the progress made by the Secretary in implementing the amendment made by subsection (a).

(3) ANNUAL REPORT.—The Secretary of the Treasury shall submit an annual report to the Congress after the end of each of the first 5 calendar

years which begin after the date of enactment of this Act on the extent to which the Secretary has reduced the overall number of currency transaction reports filed with the Secretary pursuant to section 5313(a) of title 31, United States Code, consistently with the purposes of such section and effective law enforcement.

(c) STREAMLINED CURRENCY TRANSACTION REPORTS.—The Secretary of the Treasury shall take such action as may be appropriate to redesign the format of reports required to be filed by any depository institution under section 5313(a) of title 31, United States Code, to eliminate the need to report information which has little or no value for law enforcement purposes and reduce the time and effort required to prepare such report for filing by any depository institution under such section.

SEC. 3. SINGLE DESIGNEE FOR REPORTING OF SUSPICIOUS TRANSACTIONS.

(a) IN GENERAL.—Section 5318(g) of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(4) SINGLE DESIGNEE FOR REPORTING SUSPICIOUS TRANSACTIONS.—

"(A) IN GENERAL.—In requiring reports under paragraph (1) of suspicious transactions,

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the Secretary of the Treasury shall designate, to the extent practicable and appropriate, a single officer or agency of the United States to whom such reports shall be made.

"(B) DUTY OF DESIGNEE.—The officer or agency of the United States designated by the Secretary of the Treasury pursuant to subparagraph (A) shall refer any report of a suspicious transaction to the appropriate law enforcement or supervisory agency.

"(C) COORDINATION WITH OTHER REPORTING REQUIREMENTS.—Subparagraph (A) shall not be construed as precluding any supervisory agency for any financial institution from requiring the financial institution to submit any information or report to the agency or another agency pursuant to any provision of law other than this subsection.

"(D) REPORTS.—

"(i) REPORTS REQUIRED.—The Secretary of the Treasury shall submit an annual report to the Congress at the times required under clause (ii) on the number of suspicious transactions reported to the officer or agency designated under subpara-

graph (A) during the period covered by the report and the disposition of such reports.

"(ii) TIME FOR SUBMITTING REPORTS.—The 1st report required under clause (i) shall be filed before the end of the 1-year period beginning on the date of enactment of the Anti-Money Laundering Act of 1993 and each subsequent report shall be filed within 90 days after the end of each of the 5 calendar years which begin after such date of enactment.".

(b) DESIGNATION REQUIRED TO BE MADE EXPEDITIOUSLY.—The initial designation of an officer or agency of the United States pursuant to the amendment made by subsection (a) shall be made before the end of the 180-day period beginning on the date of enactment of this Act.

SEC. 4. BANKING AGENCY PILOT PROGRAMS TO IDENTIFY MONEY LAUNDERING SCHEMES.

Before the end of the 6-month period beginning on the date of enactment of this Act, the Comptroller of the Currency and the Board of Governors of the Federal Reserve System shall each establish a pilot program designed to test the feasibility of using examiners employed by the agency to identify money laundering schemes involving depository institutions for which the agency is the appro-

priate Federal banking agency (as defined in section 3(q)) of the Federal Deposit Insurance Act.

SEC. 5. NEGOTIABLE INSTRUMENTS DRAWN ON FOREIGN BANKS SUBJECT TO RECORDKEEPING AND REPORTING REQUIREMENTS.

Section 5312(a)(3) of title 31, United States Code, is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(C) as the Secretary of the Treasury shall provide by regulation, checks, drafts, notes, money orders, and other similar instruments which are drawn on a foreign financial institution and are not in bearer form.".

SEC. 6. IMPOSITION OF CIVIL MONEY PENALTIES BY APPROPRIATE FEDERAL BANKING AGENCIES.

Section 5321 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(e) DELEGATION OF ASSESSMENT AUTHORITY TO BANKING AGENCIES.—

"(1) IN GENERAL.—The Secretary of the Treasury shall delegate, in accordance with section 5318(a)(1) and subject to such terms and conditions as the Secretary may impose in accordance with paragraph (3), any authority of the Secretary to assess a civil money penalty under this section on depository institutions (as defined in section 3 of the Federal Deposit Insurance Act) to the appropriate Federal banking agencies (as defined in such section 3).

"(2) AUTHORITY OF AGENCIES.—Subject to any term or condition imposed by the Secretary of the Treasury under paragraph (3), the provisions of this section shall apply to an appropriate Federal banking agency to which is delegated any authority of the Secretary under this section in the same manner such provisions apply to the Secretary.

"(3) TERMS AND CONDITIONS.—

"(A) IN GENERAL.—The Secretary of the Treasury shall prescribe by regulation the terms and conditions which shall apply to any delegation under paragraph (1).

"(B) MAXIMUM DOLLAR AMOUNT.—The terms and conditions authorized under subparagraph (A) may include, in the Secretary's sole

discretion, a limitation on the amount of any civil penalty which may be assessed by an appropriate Federal banking agency pursuant to a delegation under paragraph (1).".

SEC. 7. UNIFORM STATE LICENSING AND REGULATION OF CHECK CASHING, CURRENCY EXCHANGE, AND MONEY TRANSMITTING BUSINESSES.

(a) UNIFORM LAWS AND ENFORCEMENT.—For purposes of preventing money laundering and protecting the payment system from fraud and abuse, it is the sense of the Congress that the several States should—

(1) establish uniform laws for licensing and regulating businesses which—

(A) provide check cashing, currency exchange, or money transmitting or remittance services, or issue or redeem money orders, travelers' checks, and other similar instruments; and

(B) are not depository institutions (as defined in section 19(b)(1)(A) of the Federal Reserve Act); and

(2) provide sufficient resources to the appropriate State agency to enforce such laws and regulations prescribed pursuant to such laws.

(b) MODEL STATUTE.—It is the sense of the Congress that the several States should develop, through the auspices of the National Conference of Commissioners on Uniform State Laws, the American Law Institute, or such other forum as the States may determine to be appropriate, a model statute to carry out the goals described in subsection (a) which would include the following:

(1) LICENSING REQUIREMENTS.—A requirement that any business described in subsection (a)(1) be licensed and regulated by an appropriate State agency in order to engage in any such activity within the State.

(2) LICENSING STANDARDS.—A requirement that—

(A) in order for any business described in subsection (a)(1) to be licensed in the State, the appropriate State agency shall review and approve—

(i) the business record and the capital adequacy of the business seeking the license; and

(ii) the competence, experience, integrity, and financial ability of any individual who—

(I) is a director, officer, or supervisory employee of such business; or

(II) owns or controls such business; and

(B) any record, on the part of any business seeking the license or any person referred to in subparagraph (A)(ii), of—

(i) any criminal activity;

(ii) any fraud or other act of personal dishonesty;

(iii) any act, omission, or practice which constitutes a breach of a fiduciary duty; or

(iv) any suspension or removal, by any agency or department of the United States or any State, from participation in the conduct of any federally or State licensed or regulated business,

may be grounds for the denial of any such license by the appropriate State agency.

(3) PROCEDURES TO ENSURE COMPLIANCE WITH FEDERAL CASH TRANSACTION REPORTING REQUIREMENTS.—A civil or criminal penalty for operating any business referred to in paragraph (1) without establishing and complying with appropriate

procedures to ensure compliance with subchapter II of chapter 53 of title 31, United States Code (relating to records and reports on monetary instruments transactions).

(4) CRIMINAL PENALTIES FOR OPERATION OF BUSINESS WITHOUT A LICENSE.—A criminal penalty for operating any business referred to in paragraph (1) without a license within the State after the end of an appropriate transition period beginning on the date of the enactment of such model statute by the State.

(c) STUDY REQUIRED.—The Secretary of the Treasury shall conduct a study of—

(1) the progress made by the several States in developing and enacting a model statute which—

(A) meets the requirements of subsection (b); and

(B) furthers the goals of—

(i) preventing money laundering by businesses which are required to be licensed under any such statute; and

(ii) protecting the payment system, including the receipt, payment, collection, and clearing of checks, from fraud and abuse by such businesses; and

(I) is a director, officer, or supervisory employee of such business; or

(II) owns or controls such business; and

(B) any record, on the part of any business seeking the license or any person referred to in subparagraph (A)(ii), of—

(i) any criminal activity;

(ii) any fraud or other act of personal dishonesty;

(iii) any act, omission, or practice which constitutes a breach of a fiduciary duty; or

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(i) preventing money laundering by businesses which are required to be licensed under any such statute; and

(ii) protecting the payment system, including the receipt, payment, collection, and clearing of checks, from fraud and abuse by such businesses; and

(2) the adequacy of—

(A) the activity of the several States in enforcing the requirements of such statute; and

(B) the resources made available to the appropriate State agencies for such enforcement activity.

(d) REPORT REQUIRED.—Before the end of the 3-year period beginning on the date of enactment of this Act and by the end of each of the first 2 1-year periods beginning after the end of such 3-year period, the Secretary of the Treasury shall submit a report to the Congress containing the findings and recommendations of the Secretary in connection with the study under subsection (c), together with such recommendations for legislative and administrative action as the Secretary may determine to be appropriate, including any recommendation pursuant to subsection (e).

(e) RECOMMENDATIONS FOR INCENTIVES OR SANCTIONS IN CASES OF INADEQUATE REGULATION AND ENFORCEMENT BY STATES.—If the Secretary of the Treasury determines that any State has failed—

(1) to enact a statute which meets the requirements described in subsection (b);

(2) to undertake adequate activity to enforce such statute; or

(3) to make adequate resources available to the appropriate State agency for such enforcement activity,

the report submitted pursuant to subsection (d) shall contain recommendations for legislation establishing incentives which may be provided or sanctions which may be imposed to remedy such failure.

SEC. 8. REGISTRATION OF MONEY TRANSMITTING BUSINESSES TO PROMOTE EFFECTIVE LAW ENFORCEMENT.

(a) FINDINGS AND PURPOSES.—

(1) FINDINGS.—The Congress hereby finds the following:

(A) Money transmitting businesses are subject to the recordkeeping and reporting requirements of subchapter II of chapter 53 of title 31, United States Code.

(B) Money transmitting businesses are largely unregulated businesses and are frequently used in sophisticated schemes to—

(i) transfer large amounts of money which are the proceeds of unlawful enterprises; and

(ii) evade the requirements of such subchapter II, the Internal Revenue Code

of 1986, and other laws of the United States.

(C) Information on the identity of money transmitting businesses and the names of the persons who own or control, or are officers or employees of, a money transmitting business would have a high degree of usefulness in criminal, tax, or regulatory investigations and proceedings.

(2) PURPOSE.—It is the purpose of this section to establish a registration requirement for businesses engaged in providing check cashing, currency exchange, or money transmitting or remittance services, or issuing or redeeming money orders, travelers' checks, and other similar instruments to assist the Secretary of the Treasury, the Attorney General, and other supervisory and law enforcement agencies to effectively enforce the criminal, tax, and regulatory laws and prevent such money transmitting businesses from engaging in illegal activities.

(b) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code, is amended by adding at the end the following new section:

"§ 5329. **Registration of money transmitting businesses**

"(a) REGISTRATION WITH SECRETARY OF THE TREASURY REQUIRED.—

"(1) IN GENERAL.—Any person who owns or controls a money transmitting business which is not a depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act) shall register the business (whether or not the business is licensed as a money transmitting business in any State) with the Secretary of the Treasury before the end of the 180-day period beginning on the later of—

"(A) the date of enactment of this section; or

"(B) the date the business is established.

"(2) FORM AND MANNER OF REGISTRATION.—Subject to the requirements of subsection (b), the Secretary of the Treasury shall prescribe, in regulations, the form and manner for registering a money transmitting business pursuant to paragraph (1).

"(3) BUSINESSES REMAIN SUBJECT TO STATE LAW.—This section shall not be construed as superseding any requirement of State law relating to money transmitting businesses operating in such State.

"(4) FALSE AND INCOMPLETE INFORMATION.—The filing of false or materially incomplete information in connection with the registration of a money transmitting business shall be considered as a failure to comply with the requirements of this subsection.

"(b) CONTENTS OF REGISTRATION.—The registration of a money transmitting business under subsection (a) shall include the following information:

"(1) The name and location of the business.

"(2) The name and address of each person who—

"(A) owns or controls the business;

"(B) is an director or officer of the business; or

"(C) otherwise participates in the conduct of the affairs of the business.

"(3) The name and address of any depository institution at which the business maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act).

"(4) Such other information as the Secretary of the Treasury may require.

"(c) DEFINITIONS.—For purposes of this section—

"(1) MONEY TRANSMITTING BUSINESS.—The term 'money transmitting business' means any busi-

ness other than the United States Postal Service which—

"(A) provides check cashing, currency exchange, or money transmitting or remittance services, or issues or redeems money orders, travelers' checks, and other similar instruments;

"(B) is required to file reports under section 5313; and

"(C) is not a depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act).

"(2) MONEY TRANSMITTING SERVICE.—The term 'money transmitting service' includes accepting currency or funds denominated in the currency of any country and transmitting the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal reserve bank or other facility of the Board of Governors of the Federal Reserve System, or an electronic funds transfer network.

"(d) CIVIL PENALTY FOR FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS.—

"(1) IN GENERAL.—Any person who fails to comply with the money transmitting business registration requirements under subsection (a) or regu-

lations prescribed under such subsection shall be liable to the United States for a civil penalty of $5,000 for each such violation.

"(2) CONTINUING VIOLATION.—Each day a violation described in paragraph (1) continues shall constitute a separate violation for purposes of such paragraph.

"(3) ASSESSMENTS.—Any penalty imposed under this subsection shall be assessed and collected by the Secretary of the Treasury in the manner provided in section 5321 and any such assessment shall be subject to the provisions of such section.".

(c) CRIMINAL PENALTY FOR FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS.—Section 1960(b)(1) of title 18, United States Code, is amended to read as follows:

"(1) the term 'illegal money transmitting business' means a money transmitting business which affects interstate or foreign commerce in any manner or degree and—

"(A) is intentionally operated without an appropriate money transmitting license in a State where such operation is punishable as a misdemeanor or a felony under State law; or

"(B) fails to comply with the money transmitting business registration requirements under section 5329 of title 31, United States Code, or regulations prescribed under such section;".

(d) CIVIL FORFEITURE.—Section 981(a)(1)(A) of title 18, United States Code, is amended by striking "or of section 1956 or 1957 of this title," and inserting ", of section 1956, 1957, or 1960 of this title,".

(e) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5328 the following new item:

"5329. Registration of money transmitting businesses.".

SEC. 9. TREASURY STUDY OF CASHIERS' CHECKS.

(a) STUDY REQUIRED.—The Secretary of the Treasury shall conduct a study to determine—

(1) the extent to which the practice of issuing of cashiers' checks by financial institutions is vulnerable to money laundering schemes;

(2) the extent to which additional recordkeeping requirements should be imposed on financial institutions which issue cashiers' checks; and

(3) such other factors relating to the use and regulation of cashiers' checks as the Secretary determines to be appropriate.

(b) REPORT REQUIRED.—Before the end of the 180-day period beginning on the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Congress containing—

(1) the findings and conclusions of the Secretary in connection with the study conducted pursuant to subsection (a); and

(2) such recommendations for legislative and administrative action as the Secretary may determine to be appropriate.

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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

MAR 22 1994

ASSISTANT COMMISSIONER
(CRIMINAL INVESTIGATION)

The Honorable Richard H. Bryan
United States Senate
Washington, DC 20510

Dear Senator Bryan:

This letter is in response to the Congressional hearing before the Senate Committee on Banking, Housing and Urban Affairs held on March 15, 1994 to receive testimony relating to S. 1664, the Anti-Money Laundering Act of 1994. During the course of this hearing you asked Edward Federico, our Director for the Office of National Operations, who accompanied Assistant Secretary Ronald Noble at the hearing, how many investigations the Internal Revenue Service has initiated based on a suspicious Currency Transaction Report (CTR) filed by a financial institution.

Our records indicated that over the past 2 1/2 years, we have initiated approximately 650 criminal investigations based on suspicious CTR's filed by financial institutions. This total includes 344 investigations during fiscal year (FY) 1992, 214 investigations in FY 1993, and 96 investigations so far during this fiscal year.

The numbers provided are for investigations in which the primary basis for initiating was the suspicious CTR's. In many of our investigations, the suspicious CTR's are used for corroboration of other sources of information which lead to the initiation of an investigation. In addition to the criminal investigations, many of these suspicious CTR's are referred by Criminal Investigation to the Examination Division for consideration of civil enforcement action related to both tax and money laundering matters.

During the past 3 fiscal years, we have initiated approximately 6,400 money laundering investigations, recommended prosecution in approximately 4,600 investigations, and obtained convictions in over 3,000 investigations.

We hope you, the Committee, and your staff find this information useful in consideration of S. 1664. Should you need further information or have any questions, please call me or have a member of your staff contact Edward Federico at 622-4100.

Sincerely,

Donald K. Vogel

(2) the adequacy of—

(A) the activity of the several States in enforcing the requirements of such statute; and

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(d) REPORT REQUIRED.—Before the end of the 3-year period beginning on the date of enactment of this Act and by the end of each of the first 2 1-year periods beginning after the end of such 3-year period, the Secretary of the Treasury shall submit a report to the Congress containing the findings and recommendations of the Secretary in connection with the study under subsection (c), together with such recommendations for legislative and administrative action as the Secretary may determine to be appropriate, including any recommendation pursuant to subsection (e).

(e) RECOMMENDATIONS FOR INCENTIVES OR SANCTIONS IN CASES OF INADEQUATE REGULATION AND ENFORCEMENT BY STATES.—If the Secretary of the Treasury determines that any State has failed—

(1) to enact a statute which meets the requirements described in subsection (b);

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of 1986, and other laws of the United States.

(C) Information on the identity of money transmitting businesses and the names of the persons who own or control, or are officers or employees of, a money transmitting business would have a high degree of usefulness in criminal, tax, or regulatory investigations and proceedings.

(2) PURPOSE.—It is the purpose of this section to establish a registration requirement for businesses engaged in providing check cashing, currency exchange, or money transmitting or remittance services, or issuing or redeeming money orders, travelers' checks, and other similar instruments to assist the Secretary of the Treasury, the Attorney General, and other supervisory and law enforcement agencies to effectively enforce the criminal, tax, and regulatory laws and prevent such money transmitting businesses from engaging in illegal activities.

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"(B) fails to comply with the money transmitting business registration requirements under section 5329 of title 31, United States Code, or regulations prescribed under such section;".

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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

ASSISTANT COMMISSIONER
(CRIMINAL INVESTIGATION)

MAR 22 1994

The Honorable Richard H. Bryan
United States Senate
Washington, DC 20510

Dear Senator Bryan:

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Sincerely,

Donald K. Vogel

PREPARED STATEMENT OF JEFFREY SILVERMAN

PRESIDENT AND CHIEF EXECUTIVE OFFICER, M.S. MANAGEMENT, INC.

ON BEHALF OF THE NATIONAL CHECK CASHERS ASSOCIATION, INC.

Mr. Chairman and Members of the Committee, my name is Jeffrey Silverman. I am the President and Chief Executive Officer of M.S. Management, Inc. headquartered in Northbrook, Illinois. We are a privately-owned company which provides a broad array of financial services, including check cashing, money order sales, and wire transfers to communities in three States.

I am testifying today on behalf of the National Check Cashers Association (NaCCA), the professional organization that represents more than 2,400 individual check cashing centers in 35 States, and is the industry's leading voice on legislative, regulatory, and business issues. My company is a founding member of the association, and I am currently serving as a Vice President and Member of the Executive Board and Board of Directors.

We appreciate this opportunity to provide testimony regarding S. 1664, the "Anti-Money Laundering Act of 1993." Because this bill would have a substantial impact on our members and the communities they serve, we are pleased to help the Committee gain a better understanding of the nature of our business.

BACKGROUND

First, let me provide some background about the check cashing industry, the services it provides, and how the National Check Cashers Association was formed.

The professional check cashing industry in the United States is composed of approximately 4,500 neighborhood financial service centers, which cash more than 150 million checks annually with an aggregate face value of more than $45 billion. The check cashing industry employs approximately 25,000 local community residents in all corners of the United States.

In recent years, as a broader spectrum of consumers have sought increased financial service—convenience—including flexible hours and faster delivery of financial services, community-based check cashing centers have proliferated.

From its inception in the 1930's, as a response to the banking practices of the depression and changes in employer payment practices, the check cashing industry has evolved to become a pivotal link to the payments system for a substantial group of Americans, who through personal preference choose to utilize both check cashing centers and the banking system.

Just as many consumers prefer the convenience of specialty stores to large department stores, so, too, do many consumers prefer the convenience of check cashing centers to banks. Surveys indicate that 60 to 70 percent of check cashing clients maintain a banking relationship but prefer check cashing centers for reasons of convenience, ranging from quicker access to funds and neighborhood locations to more flexible hours and more rapid and efficient service.

Additional factors, such as the hidden costs of transportation and the use of valuable personal time also make check cashers more convenient depository financial institutions.

COMMUNITY FINANCIAL SERVICES

Over the years, check cashers have introduced a range of financial services to complement basic check cashing. Although the cashing of checks—including payroll checks, Government checks, personal checks, and insurance drafts—remains our industry's primary activity, other financial services are available at check cashing facilities. These include the sale of money orders, money wire transfers, welfare benefits and food stamp distribution, and public transit token sales.

Check cashers are also leaders in the electronic distribution of Government benefits and electronic collection of bill payments. Much of this technology is otherwise unavailable to our customers.

We are constantly expanding the roster of services offered to meet our customer's needs. Today, check cashing centers are responsible for the distribution of license plates and motor vehicle titles, accessibility to photocopying and fax machines, and the sale of postage stamps and lottery tickets.

Just as the services provided by check cashers have expanded over time, so have the markets they serve broadened. Check cashers continue to serve their traditional customer base in lower-income communities where we hire and train local residents. More recently, as middle-income consumers have demanded more convenient financial services, check cashers have expanded into their communities to meet their needs.

Industry Growth

The growth of the industry was stimulated, only in part, by the enactment of the Bank Deregulation Act of 1980, which among other actions eliminated deposit rate ceilings and led to explicit pricing for bank deposit services. Faced with increased service costs for maintenance of deposit accounts, consumers sought financial service alternatives, including check cashing centers which provide more convenient and quicker access to funds as well as an array of ancillary services.

Small Business Industry

Check cashing is primarily a small business activity, with the vast majority of centers owned by local operators, many of whom own one to three check cashing stores. More atypical are firms that operate more than 50 stores. Several large check cashing operations in the U.S. are public companies, the largest of which operates more than 300 stores in several different markets.

National Check Cashers Association (NaCCA)

Professional check cashers throughout the United States formed the National Check Cashers Association in 1987. The organization has grown rapidly, with a current membership of 2,400 individual check cashing centers in 35 States. The association was organized to foster the business and other interests of its members and to provide better service to customers and the community.

Among its accomplishments, NaCCA has forged adoption of a national Code of Conduct that specifies ethical standards for the industry, including disclosure of fees by posting rates, and providing receipts to customers. Not every industry has adopted such standards, and we are proud to have done so, even in our association's infancy.

Money Laundering

One of the top priorities of NaCCA is the education of our members about their responsibilities under the Bank Secrecy Act and other anti-money laundering statutes. We have devoted substantial resources to this effort during our association's short history. At each of our last several national conferences, we have invited the Internal Revenue Service and the Department of the Treasury to participate, in order to provide direct information about how to assist their efforts to fight money laundering. We have also had several meetings with these public officials for the same purpose. In addition, we have adopted a strict anti-money laundering code for our own members.

We've developed a compliance manual, written by Charles H. Morley, a recognized expert in the field. The manual is being distributed to all of our members, and will also include guidebooks for use in each location. These materials include both a compliance plan for each store, and training and testing materials for our employees. We take this *very* seriously.

In addition, our members know that they are subject to IRS compliance audits. Many can tell you that they have been audited to determine if they have filed appropriate Currency Transaction Reports and learned at our recent meeting that IRS is tripling its audits of check cashers. They are well aware of the severe penalties which can be imposed for failure to comply.

Legislative Proposal

Knowing of the concern of many in Congress about the possibility of money laundering at non-depository financial institutions, NaCCA has previously supported Federal legislation to register money transmitters, including check cashers. A copy of our proposal is attached to this testimony. We are pleased to see that S. 1664 includes some of those recommendations. We do have some serious objections, however, to portions of the legislation that are not related to money laundering.

Registration of Money Transmitters

We applaud the authors of this legislation for including a registration program for money transmitters. Check cashers agree that enforcement of the Bank Secrecy Act and other Federal statutes would be aided if the Department of the Treasury could identify *all* those companies engaged in the money transmitting business. Enforcement officials would then have a compilation of businesses which should be filing Currency Transaction Reports or keeping the required logs for transactions which meet the relevant threshold.

Money Transmitter Agents

During consideration of H.R. 3235, the House Banking Committee adopted an amendment to the Federal Registration Program which makes clear that agents of money transmitters must register with the Department of Treasury. It authorizes

the Department to set a threshold level for registration consistent with enforcement needs.

Not including agents of these companies would severely limit the value of the legislation for the purpose of identifying those who ought to be reporting information under the BSA. We urge the Senate to adopt a similar amendment to S. 1664.

Uniform State Licensing

We must strongly object, however, to many of the provisions contained in section 7. We fail to see how this section adds any ammunition to the fight against money laundering. Section 7 calls for the licensing and regulation of check cashers and money transmitters as businesses, an issue that we believe is a consumer protection regulatory matter, not one of law enforcement.

A Diverse Industry

S. 1664 includes a "Sense of the Congress" resolution urging the States to establish uniform laws for regulating check cashers and other non-depository financial institutions. There is no findings section for this provision, so no reason at all is provided to justify why State laws governing check cashers should be uniform. Our industry is diverse, with different product mixes, population density, and cost structures. There is no reasonable way to establish a uniform law that would fairly serve any consistent purpose. A review of the content of regulations in those States which now have licensing requirements would show differences in regulations based on the specific structure of the industry in each of those States. The nature of these regulations does not lend itself to uniformity.

Regulation—A State Decision

The decision to regulate check cashers or money transmitter businesses should be left to the discretion of the individual States. Each State legislature can decide on its own whether regulations are needed for our industry, and in fact, they're already making those individual decisions. Check cashers are now regulated in 11 States, and more will be considering regulations this legislative session. Without calls for uniformity, or a "model," they are considering bills tailored to their individual circumstances, or *deciding that licensing and regulation are not necessary.* No compelling argument has been made for coercing all States to regulate in the same manner.

A few short years ago only three States regulated check cashers, and now the number is up to eleven. Others have considered, and rejected the idea. They ought to be free to do so. In fact, in some States there are only a few check cashers in business. Should these States have to establish a regulatory scheme, and one that does not provide any funding for that purpose?

A Better Model

The decision to establish a licensing program carries many implications for States, including the expenditure of scarce resources. If Congress wants to enact a resolution urging the States to develop a model statute, then it would be far better to advocate adoption of a model anti-money laundering bill, calling on States to coordinate enforcement against money laundering with the Treasury Department. Of course, such a model law should apply to *all* non-bank financial institutions.

Fee Regulation

During the House Banking Committee markup, an amendment was added to the State licensing section of H.R. 3235 that urges States to "review and approve the fee structure" before issuing licenses to check cashers and money transmitters. *We strongly object to this provision, and urge the Senate to reject it.* It was not the subject of *any* hearing. It is not even clear how a State could implement it. Does it forbid a check casher from changing rates once the business is licensed? Would these businesses be locked into their fees?

I know of no precedent where the Federal Government has singled out an unsubsidized, highly competitive industry for price controls outside of a national emergency. To make matters worse, no similar fees are placed on competitors, including banks and savings and loans.

Check cashers absorb a substantial risk in cashing checks. Unlike banks, there are no funds on deposit to hold until a check clears. Our own money is at risk in each transaction, and risk is an additional cost to the check casher not faced by depository institutions.

The check cashing industry is subject to the rigors of competition. We compete daily with banks, groceries, liquor stores, credit unions, and a multitude of businesses which may cash checks. Some consider check cashing a loss-leader, and don't

charge compensatory rates, or even cash them for "free" spreading costs over their other products.

Our business allows for a relatively low cost of entry, and our service is highly price sensitive. Competition quickly appears where there are favorable market conditions, and accounts for the doubling of check cashers during the past 5 to 7 years.

All these factors—cost plus competition—go into the setting of fees.

If there are specific factors peculiar to a given State, it is free today to regulate check cashing fees. Eleven States have decided to regulate check cashing fees, and the level of rates varies and sometimes differs depending on the type of check to be cashed.

Thank you for providing the National Check Cashers Association this opportunity to present our views.

PREPARED STATEMENT OF EZRA C. LEVINE

PARTNER, HOWREY & SIMON

ON BEHALF OF THE AD HOC GROUP OF MONEY TRANSMITTERS

INTRODUCTION

Mr. Chairman and Members of the Banking Committee, as a partner at the Washington, DC based law firm of Howrey & Simon, I serve as counsel to the Ad Hoc Group of Money Transmitters,* and in that capacity, submit this prepared testimony on S. 1664, the Anti-Money Laundering Act of 1993. The Ad Hoc Group of Money Transmitters is a diverse group of non-depository financial institutions that provide critical financial services to the public at affordable prices. While the Ad Hoc Group members are the major vendors of money transmission services offered to the American public, the industry as a whole is composed of many firms, including small single-outlet money order issuers, currency exchanges, foreign money transmitters, and regional money transmitters. "Money transmitter" is a term that is used to describe those non-bank institutions that provide services including sales of money orders, foreign currency-denominated checks and travelers checks, domestic and foreign funds transfers by wire and payment orders, and cash advances.

As an initial matter, a brief overview of the non-bank money transmitter industry is appropriate, to be followed by the Ad Hoc Group's specific concerns about S. 1664. Although we have a few substantive concerns about this bill—some of which have already been addressed through amendments in the House version of the bill, H.R. 3235—we are most concerned about what this bill *says* about our industry.

Specifically, singling out the non-bank money transmitter industry for remedial legislation to combat money laundering reflects a fundamental misunderstanding of both the industry and the money laundering problem. First, there is no credible evidence that money laundering is occurring at a greater rate in non-banks than in banks. Indeed, recent evidence and logic suggest that non-banks are the least likely conduit for laundering large sums of money. Second, there is a misconception that non-bank money transmitters conduct their businesses free from Government oversight or regulation. In fact, money transmitters are subject to regulation in forty-four States and to Federal regulation under titles 31 and 26.

Enhancement of law enforcement efforts to combat money laundering depends not upon the imposition of additional laws and regulations, but upon effectively promoting and achieving uniformity among the widely varying State laws and regulations that are already on the books and eliminating unnecessary paper work that has not only overwhelmed law enforcement agencies but also interfered with their efforts. This bill, with some minor adjustments, can accomplish some of those goals. The Ad Hoc Group actively supports constructive efforts on both the Federal and State level to combat money laundering. Ad Hoc Group members have consistently advocated uniform State laws aimed at protecting the public from money laundering and consumers against financial risk or loss.

BACKGROUND OF THE INDUSTRY

The non-bank money transmitter industry serves vital national financial interests by providing economic and convenient services to traditional bank customers, to the more than 15 million "unbanked" families in the United States, and to tourists and foreign visitors. Non-bank money transmitters provide money orders, travelers

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*The members of the Ad Hoc Group are Thomas Cook Inc.; Travelers Express Company, Inc.; Western Union Financial Services, Inc.; CitiCorp Services, Inc.; Comdata Network Inc.; Integrated Payment Systems Inc.; and Interpayment Services, Ltd.

checks, foreign currency-denominated checks, domestic and foreign funds transfers by wire and payment orders, and cash advances. Non-bank money transmitters operate through a vast network of authorized vendors which are often small businesses such as convenience stores, supermarkets, pharmacies, travel agents, and gas stations to provide financial services.

Non-bank money transmitters also provide services to traditional bank customers. By charging significantly less for retail financial services than banks, money transmitters are extremely price competitive. Non-banks have a growing base of business from traditional bank retail customers and businesses that seek quality service at economical prices. Non-bank money transmitters also provide important services to business travelers and tourists who need cash and the ability to engage in financial transactions away from home where banks cannot or do not provide service.

Non-bank money transmitters also serve customers who have been excluded from traditional banking. After bank deregulation in the 1980's, banks fled the inner cities and increased their fees for consumer banking services. Since 1990 alone, fees charged by banks for checking accounts and other retail services have risen 18 percent. As a result, at least 15 million American families have become "unbanked" in that they maintain no depository accounts. These Americans nonetheless have a need for basic financial services: They need to pay bills; to conduct routine day-to-day financial transactions; to transmit funds to relatives. Non-bank money transmitters serve these "unbanked" Americans by permitting them to purchase only the financial services they need without requiring that they purchase services in any minimum dollar amount or maintain any depository account.

SECTION-BY-SECTION COMMENTS ON S. 1664

We turn next to our specific comments on S. 1664. The Ad Hoc Group is generally supportive of S. 1664's efforts to streamline current money laundering reporting and recordkeeping requirements, and to impose minimal Federal registration requirements on money transmitters.

Section 2—*Streamlining of Currency Transaction Reporting*

The Ad Hoc Group emphatically supports efforts to eliminate the filing of unneeded and unhelpful Currency Transaction Reports ("CTR's"). To that end, section 2 of S. 1664 provides exemptions from CTR reporting requirements in instances where a CTR would have little or no value for law enforcement purposes. The intent of this provision—to eliminate regulatory burdens on both Government and businesses that do not discernibly advance any public good and, in fact, hinder law-enforcement efforts by generating an unmanageable volume of records—is commendable. As drafted, however, section 2 is inexplicably limited to "depository institutions," and thus excludes non-bank money transmitters. This limitation is irrational and unjustified.

First, the policy underlying section 2—to eliminate the burdens on both Government and industry of useless CTR filings—compels its application to depository institutions and money transmitters alike. Indeed, once the Treasury Department has determined that a particular customer or class of customers is unlikely to be engaged in illicit activities, no reason exists why *any* institution, whether depository or non-depository, should be required to file a CTR with respect to that customer or customers.

Second, excluding money transmitters from this regulatory streamlining puts them at a significant competitive disadvantage vis-à-vis the depository institutions with whom they compete. This is particularly true in light of the fact that money transmitters are typically small-to-medium sized businesses whose costs of complying with CTR filing requirements are proportionately greater than the costs to large, sophisticated depository institutions. In short, there is simply no principled reason to exclude this important segment of currency transaction reporters from the bill's streamlining provisions.

In considering these same issues, the House Committee on Banking, Finance and Urban Affairs, which currently has before it H.R. 3235, the companion bill to S. 1664, has already amended H.R. 3235 to include money transmitters among the institutions to benefit from the streamlining of the format of Currency Transaction Reports. We further urge the inclusion of money transmitters in the bill's exemption-from-reporting and report-reduction provisions as well.

Section 3—*Suspicious Transaction Reporting*

The Ad Hoc Group supports the efforts in section 3 of the bill to create a single filing system for suspicious transaction reporting. In light of the fact that a growing number of States already require suspicious transaction reporting, however, the Ad Hoc Group urges that section 3 be expanded to provide that suspicious transaction reports filed with a federally designated recipient may be shared with State finan-

cial institutions supervisory agencies. Allowing State access to this centralized body of information would aid State enforcement efforts and limit adoption by States of duplicative and costly reporting requirements.

Section 5—*Reports Regarding Foreign Instruments*

Section 5 of S. 1664 would authorize the Secretary of the Treasury to promulgate additional reporting requirements relating to instruments drawn on foreign financial institutions. Given that the overriding intent of S. 1664 is to *reduce* the reporting requirements, it seems particularly inappropriate at this juncture to *increase* reporting obligations without carefully considering whether such additional reporting will, on balance, enhance law enforcement efforts to combat money laundering. There is no reason to believe that serious consideration has yet been given to whether foreign-drawn instruments present a money laundering problem—there is no justification, for example, for treating cashiers' checks issued by a foreign institution any differently than those issued by a domestic institution. The Ad Hoc Group believes that, to avoid adding to the current glut of money laundering reports, any expansion of the reporting requirements must be based on demonstrable evidence that that expansion is necessary and worthwhile.

Section 7—*Uniform State Laws*

The Ad Hoc Group has been at the forefront of promulgating uniform State laws and agrees with the sense of Congress in section 7 of the bill that States should establish uniform laws for licensing and regulating the industry. The Ad Hoc Group has worked with an organization of State regulators, the Money Transmitter Regulators Association ("MTRA"), on model legislation that has been adopted in Indiana and is currently moving through the Idaho and Tennessee legislatures. Uniform State laws help to reduce administrative burdens on State governments, reduce the costs of doing business for multistate and national money transmitters, and enhance State and Federal law enforcement efforts.

The Ad Hoc Group opposes, however, section 7's requirement that the Treasury Department recommend sanctions to be taken against States that have failed to take sufficient steps to regulate non-bank financial institutions. Such authority could have a detrimental impact on efforts to regulate non-banks that are currently underway, and could undermine efforts to establish uniform State laws. The threat of sanctions could, for example, compel States to legislate and promulgate regulations without due consideration of the need to coordinate their efforts with other States so as to achieve uniform regulation. In recognition of these dangers, the House Subcommittee on Financial Institutions Supervision, Regulation, and Deposit Insurance deleted this "sanction" provision from H.R. 3235 during markup.

Section 8(a)—*"Findings" About Money Transmitting Businesses*

The Ad Hoc Group strenuously objects to the "findings" contained in section 8 of the bill that "[m]oney transmitting businesses are largely unregulated businesses and are frequently used in sophisticated schemes to" launder money. These "findings" are the product of misconceptions about how the money transmitter industry operates and a failure to distinguish between legitimate money transmitters and unlicensed, criminal operators.

With respect to the allegation that money transmitters are "largely unregulated," just the opposite is true. Forty-four States currently regulate and license money transmitters and check sellers and almost half of the States have money laundering statutes that apply to money transmitters. Licensees typically must submit detailed information indicating that they will operate in a safe and sound manner. For example, these statutes impose bonding and net worth requirements. In addition, a growing number of States now require that licensees maintain investments equal to the amount of outstanding payment instruments—in effect this is a 100 percent reserve requirement compared with banks' 3 to 12 percent reserve requirements. Under all licensing laws, licensees must file periodic reports with State regulators and submit to on-site examinations by State agencies.

In addition to State regulation, non-bank money transmitters are subject to the full range of Federal currency reporting and recordkeeping requirements under title 31 as "financial institutions." Low volume money order and travelers check third party vendors which do not qualify as "financial institutions" under title 31, are subject to Form 8300 and related reporting requirements under title 26. Title 31 and title 26 reporting requirements impose a greater burden on non-banks because the cost of compliance with CTR filing and recordkeeping requirements are proportionately greater for money transmitters than for banks.

With respect to the allegation that money transmitters act as havens for money laundering, there is no empirical evidence whatever that money laundering of drug profits occurs in non-banks at a greater rate than in banks. Indeed, a recently ap-

pointed Florida law revision task force found *no evidence* of widespread money laundering in non-banks. The allegations of money laundering in non-banks that have surfaced recently have, without exception, involved "casas de cambio," "giro houses," and other unlicensed, illegitimate operators. There are several reasons why money launderers prefer to avoid doing business with legitimate money transmitters.

First, transactions at non-bank money transmitters are not a cost effective or efficient means of laundering large amounts of currency and, as a consequence, are not a primary conduit for illicit funds. That is because non-bank transactions are limited to or typically involve small dollar amounts. Instead, money laundering usually occurs by physical shipment of currency out of the United States or through bank wire transactions.

Second, the non-bank money transmitters which utilize third party vendors carefully screen potential vendors and provide vendors with plain language anti-money laundering compliance information. Industry members monitor vendor compliance with applicable regulations, review compliance programs with their vendors, and publish newsletters and updates about regulatory requirements. Industry members report non-complying vendors to appropriate Federal and State agencies and terminate the agency relationship. As a result, money transmitter agents are equipped to detect and report illicit activities.

Third, the relatively small size of the non-bank money transmitter industry suggests that it provides the least likely place to launder larger sums. For example, banks transfer electronically over $800 billion per *day*, or more than $450 trillion per year. By comparison, two of the largest funds by wire transmitters transfer only $5 billion per *year*. Thus, it is illogical to focus anti-money laundering efforts on non-banks given this disparity and the volume of funds transferred.

The Ad Hoc Group believes that the legislative "findings" contained in section 8(a) are erroneous and that inclusion of such findings in any legislation ultimately passed would unfairly prejudice consumers and State lawmakers against the legitimate money transmitter industry. Because inclusion of these "findings" in legislation is unnecessary, the Ad Hoc Group respectfully requests that they either be deleted or reformulated to present an accurate picture of the industry and the problems that section 8 is intended to redress.

Section 8(b)—*Registration of Agents*

With regard to the substantive provisions of section 8, the Ad Hoc Group supports the proposal that money transmitting businesses be required to register with the Federal Government but believes that the terms of any such registration requirement should be tailored to achieve law enforcement objectives. As drafted, section 8 could be interpreted to require all authorized vendors—sometimes referred to as "agents"—of a money transmitter to register with the Treasury Department. Such massive registration is unnecessary, counterproductive, and burdensome not only for the proposed registrants but for the Treasury Department. In the aggregate there are over one hundred thousand agents in the United States today.

Members of the Ad Hoc Group utilize tens of thousands of authorized vendors around the country, including many "mom and pop" proprietorships. Many of these authorized vendors provide money orders and other money transmitting services to customers only as a minor and incidental part of their business and, in many cases, engage in only a few transactions each month. These services do not generate large profits for the authorized vendors, but rather are provided as a convenience to their customers (much like selling U.S. postage stamps, which many authorized vendors also do). In most cases the principal business of the authorized vendor is wholly apart from and unrelated to the provision of financial services. Authorized vendors are already intimidated by the existing Federal regulatory reporting and record-keeping requirements of title 31 and title 26, and by the severe criminal and monetary penalties (including forfeiture of assets) that can result from a lapse in compliance. These vendors do not possess the administrative resources or the sophistication to keep up with additional Federal regulations. If required to comply with additional regulations, it is our belief that many vendors will simply cease offering money transmission services altogether.

Although we fail to see how the registration of "agents" would combat money laundering, there is a viable alternative to requiring thousands of agents to register independently. The proper source for information about authorized vendors is the licensees themselves. Licensees maintain information about their authorized vendors on a regular basis in central data systems—including the information listed in section 8(b)'s registration requirement. Consequently, licensees constitute a centralized repository of precisely the information sought under section 8 and offer Federal authorities a less burdensome way to collect that information. Licensees could provide Treasury with lists of agents and their addresses upon request and thereby

eliminate hundreds of thousands of additional pages of paper for Treasury—something this bill was designed to do. The House Banking Committee amended H.R. 3235 in markup to adopt this approach.

By limiting section 8(b)'s registration requirement to exclude businesses for whom "money transmitting business" (as defined in the bill) constitutes only an incidental part of their business, authorities would continue to have access to the information identified in section 8(b) and authorized vendors would be spared an unnecessary regulatory burden. To effect this change in the bill, we believe that the phrase "as its principal business" should be added to the end of the definition of a "Money Transmitting Business."

Moreover, if authorized vendors are required to register independently of their respective licensees, the requirement that they provide the name and address of each person who "participates in the conduct of the affairs of the business" is extremely overbroad. Although such a requirement may be appropriate in the context of depository institutions—where all employees are involved in providing financial services—it is woefully overbroad as applied to money transmitters. Many if not most employees of an authorized vendor—including clerical personnel, maintenance workers, etc.—are completely uninvolved in providing money transmission services and, as such, should not be the subject of a money transmission reporting requirement. Requiring information about these employees would result in an avalanche of useless data acquired at great expense to the money transmitter industry and would be burdensome to Treasury. Anti-money laundering provisions like this one are designed for depository institutions and fail to reflect the unique way in which nonbank money transmitters operate. To cure this defect (and assuming that authorized vendors are required to register at all), the Ad Hoc Group believes that this provision must be limited to include only the *management* of an authorized vendor in charge of providing money transmitter services.

Section 8(b)—*Additional Limitations Needed on Registration Requirement*

In addition, it is important that any Federal registration requirement not be allowed to expand and grow into a full-blown Federal licensing scheme. Because money transmitters are already subject to licensing at the State level, such an expansion of the Federal registration concept would unnecessarily duplicate the regulatory function now exercised by the States at the expense of the money transmitter industry. The Ad Hoc Group believes that section 8(b)'s requirement that registrants provide "[s]uch other information as the Secretary of the Treasury may require" is overbroad and poses precisely such a danger. The Group urges the Committee to limit the Secretary's authority in this regard by either deleting this provision entirely, or by limiting the kind of information the Secretary may require to, for example, "information reasonably necessary to identify the registrant." If authority is given to the Secretary to expand the scope of required information, any such expansion should be subject to rulemaking procedures and be required to be supported by a finding that the expansion will not impose undue burdens on money transmitters and is necessary for law enforcement efforts.

* * *

Finally, the Ad Hoc Group urges Congress to await the recommendations of the Treasury Department's recently formed Bank Secrecy Act Advisory Group prior to moving forward with this legislation. This group, composed of representatives from Government and industry, will soon address some of the issues encompassed by this bill. The findings and recommendations of the Advisory Group undoubtedly will be of assistance in formulating fair and effective legislation.

CONCLUSION

The Ad Hoc Group appreciates this opportunity to submit this testimony to the Banking Committee and is prepared to work with the Committee to enact this important legislation.

GAMING CONTROL BOARD
1150 E. William St., Carson City, NV 89710
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March 14, 1994

Carson City
(702) 687-6525

Ms. Kelly Cordes, Chief Clerk
Senate Committee on Banking, Housing,
and Urban Affairs
Dirksen Senate Office Building, Room 534
Washington, D.C. 20510

Dear Ms. Cordes:

I appreciate the opportunity Chairman Riegle has extended the Nevada Gaming Control Board to testify on S. 1664, the Anti-Money Laundering Act of 1994. Unfortunately, the date of the hearing, March 15, 1994, is in conflict with my schedule; accordingly, I will not be able to appear in person at the hearing. However, I have taken the liberty of summarizing the Board's S. 1664 comments in the attached document which I am submitting for the record.

If I can be of further assistance to the Committee regarding this matter, please feel free to call.

Sincerely,

William A. Bible
Chairman

WAB/GG:sb

Attachment

cc: Richard Bryan
Steve DuCharme
C. Brian Harris
Gregory Gale
Central Files

PREPARED STATEMENT OF WILLIAM A. BIBLE

CHAIRMAN, NEVADA STATE GAMING CONTROL BOARD

Chairman Riegle and Members of the Committee, the Nevada State Gaming Control Board appreciates the opportunity to testify on S. 1664, the Anti-Money Laundering Act of 1993, and to provide testimony on the Gaming Control Board's enforcement efforts to prevent money laundering. The Board fully supports all reasonable efforts by the Federal Government to adopt statutes and regulations that streamline the currency transaction reporting process, provide meaningful law enforcement information to State and Federal regulatory agencies, and restrict the use of casinos for money laundering purposes. After reviewing S. 1664, I have concluded that the programs and requirements to be implemented by this bill are consistent with these objectives.

S. 1664 COMMENTS

Sections 1 and 4–9 of the bill have no direct or indirect bearing on the Nevada casino industry or the Nevada Gaming Control Board and, accordingly, I have no specific comments on these sections. I do, however, generally applaud the efforts of the Federal Government to strengthen regulatory control of check cashing, currency exchange, and money transmitting businesses. Very strict controls are currently in place to regulate financial institutions and certain non-bank financial institutions (e.g., casinos), and it follows that these other non-bank financial institutions should be more strictly controlled. Other sections of the bill will, if adopted, improve existing Federal regulatory efforts regarding money laundering detection and prevention.

There are two sections of S. 1664 for which I have specific comments. Although these sections also do not have a direct impact on the Nevada casino industry, Nevada is indirectly affected by the proposals.

Section 2—*"Reform of CTR Exemption Requirements to Reduce Number and Size of Reports Consistent With Effective Law Enforcement"*

I understand that the purpose of this section of the bill is three-fold:

1. To provide guidelines that will exempt financial, depository institutions from filing CTR's on transactions with other depository institutions, governmental agencies, or businesses whose reports "have little or no value for law enforcement purposes."
2. With a more aggressive exemption program in place, the bill directs Treasury to "seek to reduce" the number of reports required to be filed by depository institutions by at least 30 percent.
3. To direct Treasury to redesign, where necessary, the format of reports required to be filed by depository institutions pursuant to section 5313(A) of title 31, United States Code, to eliminate information that has little value for law enforcement purposes, and to reduce the time and effort required for the institution to prepare the reports.

Although casinos are not depository institutions and this section of the proposed bill will not affect any of the country's gaming establishments, I view two concepts presented in this section as being very significant. First, the bill acknowledges that reporting certain types of transactions between some businesses provides information that has little or no value to Treasury from a law enforcement perspective. Rather than having the businesses and institutions incur the costs to report these transactions and have Treasury incur costs to process the reports, the unnecessary reporting will be identified and exempted by Treasury. As a result, there will be a planned 30 percent reduction in reporting which is very significant.

If this concept is applied to the casino industry's Federal currency transaction reporting requirements, I believe reporting can be streamlined and only information necessary for Treasury's law enforcement purposes will be filed. Accordingly, I support this concept for depository institutions, and am hopeful that the same objectives can be maintained when Treasury establishes final currency transaction reporting requirements for the gaming industry.

Second, the bill requires Treasury to review the current reporting forms for depository institutions, and to delete any information that is not necessary for law enforcement purposes. This is another positive step in the right direction toward the streamlining of the reporting process, and I am supportive of the concept.

Section 3—*"Single Designee for Reporting of Suspicious Transactions"*

I understand that this section of the bill will require all reports of suspicious transactions to be filed with one designated Federal officer or agency. Then the designee will coordinate dissemination of the suspicious transaction information to the appropriate agency for follow-up.

The casinos in the State of Nevada are not currently required to file suspicious transaction reports with the Gaming Control Board and, therefore, no such transactions are being referred to Treasury. The Board acknowledges the importance of suspicious transaction reports from a law enforcement perspective; and I support the amendment of Nevada's gaming regulations to require such reporting. The Board looks forward to working with Treasury in developing suspicious transaction reporting requirements that are clearly written and enforceable, with the overall objective of providing meaningful and useful law enforcement information. The reports that will be submitted once Nevada's suspicious transaction reporting requirements are adopted will then be filed to Treasury's designee pursuant to S. 1664, if this requirement is adopted. The Board supports this section of the bill.

General Comments on Treasury's Title 31 Exemption Authority

S. 1664 in its current form does not address Treasury's authority to grant casino-related title 31 exemptions to those States that have established a regulatory system that substantially meets the Federal casino currency reporting and recordkeeping requirements. However, I understand that a bill is being considered in the House (H.R. 3235) that includes a section requiring the Secretary of Treasury to revoke all such exemptions that have been previously granted by the Secretary. If such a provision was to be included in S. 1664, the Board would take serious exception to the bill since Nevada is a firm supporter of the Secretary of Treasury having discretionary authority to grant exemptions from the Federal casino currency reporting and recordkeeping requirements.

As the Committee knows, the State of Nevada was granted an exemption from the Federal casino currency requirements in May, 1985. The exemption was granted by Treasury because Nevada established, through statute and regulation (Nevada Gaming Commission regulation 6A), a system that, at that time, met the Federal casino currency reporting and recordkeeping requirements. Coincident with the granting of the exemption, Nevada's gaming authorities entered into a Memorandum of Agreement with Treasury that required the State of Nevada to enforce these casino currency laws and regulations, with Treasury retaining certain oversight capabilities. The agreement required Nevada to keep Treasury fully informed of all significant casino noncompliance, and to cooperate with any requests from Treasury related to their investigative or oversight efforts.

Since 1985, the Board has abided by the agreement and has fully cooperated with Treasury in all aspects of their oversight actions. We have responded to their requests and have worked with Treasury during two oversight examinations performed in 1987 and 1990. The Board enjoys a good working relationship with Treasury, which we hope will continue.

The Federal Government benefits from this relationship, authorized through title 31's exemption process, since the State of Nevada devotes significant resources to properly enforce the State's casino currency laws and regulations, with the ultimate objective of insuring that Nevada's casinos neither participate in nor allow any type of money laundering activity. Last year the Board expended nearly 20,000 man-hours enforcing regulation 6A in the State's 211 casinos that are required to comply with the regulation. This is in addition to the extensive time that Board Agents routinely spend on-site regulating all other aspects of Nevada's gaming laws and regulations. Board Agents are already very familiar with the operational controls and recordkeeping systems of Nevada's casinos; accordingly, examinations of casino operations for currency transaction compliance is easily integrated in with the Board's other responsibilities.

With the Board expending these significant enforcement efforts, the Federal Government can avoid duplicity and will not need to also allocate comparable resources toward these regulatory efforts. The Internal Revenue Service and Treasury can redirect personnel to other areas knowing that Nevada's regulators are enforcing casino currency transaction requirements, while maintaining their oversight authority. Additionally, Nevada's casinos benefit by only having to accommodate auditors from one public agency, thereby avoiding the costs and inefficiencies of duplicative audits.

The Nevada Gaming Control Board and the Nevada Gaming Commission strictly enforce all aspects of regulation 6A. Fines ranging from $10,000 to $250,000 may be levied for each currency violation, amounts that are similar to Federal levels. Since the inception of regulation 6A in 1985, a total of $1,782,000 in fines have been levied for currency violations. Most recently, one Nevada licensee was fined $1 million for numerous reporting and recordkeeping violations.

In addition to the levying of fines, Nevada's gaming authorities have one recourse that is not available to the Federal Government—the revocation of a casino's gaming license. Although this ultimate penalty has not yet been imposed for regulation 6A violations, the authority to impose such a penalty exists. Accordingly, because

it's license is in jeopardy, a Nevada casino has a strong disincentive to participate in money laundering activities.

The Board believes that regulation 6A is a good regulatory model for casino currency transaction reporting and recordkeeping; however, Treasury has indicated that some changes in regulation 6A will be necessary if it is to continue to be substantially similar to the Federal casino currency requirements which are to be significantly amended effective December 1, 1994. As previously discussed, this "substantially similar" test must be satisfied if the Secretary of Treasury is to continue to grant the State of Nevada an exemption.

The Gaming Control Board and Treasury have held a number of discussions regarding this matter in the last few months. For your information, in October 1993 Deputy Assistant Secretary (Enforcement) Faith Hochberg, Office of Financial Enforcement Director Peter Djinis, and other Treasury and Internal Revenue Service officials met with Board and gaming industry representatives in Las Vegas to discuss Treasury's proposed regulations and to see firsthand how Nevada's casinos comply with the requirements of regulation 6A. I believe this meeting was beneficial in that Treasury became more fully informed of the reporting and recordkeeping requirements of regulation 6A, and the Board received valuable insights into why certain Treasury regulation amendments are being proposed.

Nevada's gaming authorities are committed to working with Treasury officials in the coming months to develop an amended regulation 6A that will be substantially similar to the Federal requirements. The Board is also committed to the "level playing field" concept whereby all of the country's casinos will comply with similar currency transaction reporting and recordkeeping requirements.

However, this regulation amendment process and Nevada's commitment of resources necessary to fully enforce all aspects of regulation 6A will no longer be necessary if S. 1664 eventually includes a provision that requires the Secretary of Treasury to revoke all exemptions. That is why I would ask the Committee to maintain this bill in its current form, and not supplement S. 1664 with any such requirements.

CONCLUSION

Once again, I do appreciate the opportunity to offer my testimony on S. 1664, and to discuss the enforcement of Federal and Nevada casino currency transaction laws and regulations. The Board believes the Federal Government is heading in the right direction in streamlining the currency reporting process, thereby reducing the amount of reports that have no use in law enforcement matters. Money laundering activity is a serious concern of the Nevada Gaming Control Board, and the State will continue to expend whatever resources are necessary to insure Nevada's casinos are not party to any such activities. Of course, this will only be possible if Treasury continues to exempt Nevada from the Federal requirements.

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